GSTAT

Division Bench Court No. Court II

NAPA/147/PB/2025

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

Versus

PAREENA INFRASTRUCTURE PVT. LTD. **.............Respondent**

Counsel for Appellant **Counsel for Respondent**

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

ORDER

1. The present proceedings arise out of a reference made by the Standing Committee on Anti-profiteering for investigation alleging profiteering in respect of construction services provided by M/s Pareena Infrastructure Pvt. Ltd, C-7A, 2 Floor, Omax City Centre Mall, Sohna Road, Sector-49, Gurugram, Haryana-122002 (hereinafter referred to as "**the Respondent**") in their project **"Laxmi Apartment".**
2. It is alleged that the Respondent did not pass on the benefit of Input Tax Credit (for short **"ITC")** to its home-buyers by way of commensurate reduction in prices on purchase of flats by them on the introduction of GST w.e.f. 01.07.2017 in terms of Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as **'The CGST Act, 2017'**)
3. The Directorate General of Anti-Profiteering (hereinafter referred to as "the DGAP") investigated the matter and submitted its investigation Report dated 15.12.2021 under Rule 129(6) of the Goods and Service Tax Rules, 2017(for short "CGST Rules 2017) before the National Anti-Profiteering Authority (hereinafter referred to as **"the NAA"),** the erstwhile Authority.

4. The investigation was set into motion by the DGAP. Notice was issued to the Respondent calling upon to show cause whether the benefit of the ITC had been passed on to the consumers by way of commensurate reduction in prices, and if so, to *suo-moto* determine the quantum thereof.
5. Tenure of the NAA ended on 30.11.2022. Thereafter, the Competition Commission of India (hereinafter referred as to "**the CCI**") was empowered to examine the matters related to Anti-profiteering with effect from 01.12.2022 vide Notification No. 23/2022 - Central Tax dated 23.11.2022.
6. The CCI vide its order dated 16.08.2022, remanded back the matter to the DGAP under Rule 133(4) of the CGST Rules, 2017 to re-investigate in respect of all major projects of the Respondent executed under the same GST Registration No. 06AAFCP0883JIZ8.
7. The DGAP investigated all the projects executed by the Respondent and submitted its report dated 21.02.2023 under Rule 129(6) CGST Rules, 2017 to the CCI.
8. In the meantime, the Hon'ble High Court of Delhi delivered its Judgement in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India (2024) 14 Centex 374 (Delhi)***.
9. The CCI directed the DGAP for re-investigation under Rule 129 of the CGST Rules, 2017 in view of the Judgement passed by Hon'ble High Court of Delhi in ***Reckitt Benckiser (Supra)*** as the methodology adopted by DGAP was held to be flawed.
10. Pursuant thereto, a show cause notice was issued by the DGAP to the Respondent under Rule 129 of the CGST Rules, 2017 for redetermination of profiteering amount. The DGAP based on the submissions made by the Respondent and supporting documents placed on record and following the guidelines of ***Reckitt Benckiser (Supra)***, submitted its report dated 09.12.2024.

11. During the investigation the DGAP has found that four projects of the Respondents were under construction namely the Elite Residences/Express Heights, Coban Residences, Micasa and Laxmi Apartment.

12. **Coban Residences: -**

The DGAP computed the ratio of credit availed to purchase value (in %) in the aforesaid project in following manner: -

Table "A"

S. No.	Particulars	Pre-GST Period	Post-GST Period
1	Purchase Value of Goods and Services (Excluding Taxes and Duties)	70,79,43,054	81,47,34,973
2	Credit of Service Tax availed	3,43,14,072	
3	Credit of VAT availed	1,57,16,074	
4	Total Credit Availed in Pre-GST Period	5,00,30,146	
5	ITC of GST Availed		13,74,81,643
6	**Ratio of Credit Availed to Purchase Value (in %)**	**7.06**	**16.87**

13. On the basis of the aforesaid computation, the profiteered amount as computed as under:-

S. No.	Particulars		Post-GST
1	Period	A	July, 2017 to March, 2024
2	Ratio of Credit availed to Purchase Value as per Table - A above (%)	B	7.06/16.87

3	Increase in input tax credit availed Post-GST (%)	C	9.81
4	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	81,47,34,973
5	Total Savings on account of additional ITC benefit	E = D*C/100	7,99,25,501
6	Total Saleable Area (in Sq. Ft.)	F	10,91,810
7	Total Saving Per Sq. Ft.	G = E/F	73.20
8	Total Sold Area (in Sq. Ft.) till the date of Completion Certificate/Occupancy Certificate	H	306668
9	Profiteered Amount	I = G * H	2,24,49,504

14. With regard to the aforesaid project, the DGAP also noted that the out of the total profiteering amount (including GST) Rs. 2,51,43,445/-, the Respondent has already passed on Rs. 4,83,20,787/- to the home-buyers. Since all the eligible home-buyers did not receive the commensurate benefit, therefore, it was concluded that the benefit of ITC required to be passed on to the home-buyers comes to Rs. 16,56,395/-.

15. **Elite Residences/ Express Heights: -**

The DGAP computed the ratio of credit availed to purchase value (in %) in the aforesaid project in following manner: -

S. No.	Particulars	Pre-GST Period	Post-GST Period
1	Purchase Value of Goods and Services (Excluding Taxes and Duties)	43,30,16,898	32,72,29,207
2	Credit of Service Tax availed	1,63,71,317	
3	Credit of VAT availed	1,35,85,214	
4	Total Credit Availed in Pre-GST Period	2,99,56,531	

5	ITC of GST Availed		4,03,99,409
6	**Ratio of Credit Availed to Purchase Value (in %)**	**6.91**	**12.34**

16. On the basis of the aforesaid computation, the profiteered amount as computed as under: -

S. No.	Particulars		Post-GST
1	Period	A	July, 2017 to March, 2024
2	Ratio of Credit availed to Purchase Value as per Table - A above (%)	B	6.91/12.34
3	Increase in input tax credit availed Post-GST (%)	C	5.43
4	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	32,72,29,207
5	Total Savings on account of additional ITC benefit	E=D*C/100	1,77,68,546
6	Total Saleable Area (in Sq. Ft.)	F	5,18,012
7	Total Saving Per Sq. Ft.	G = E/F	34.30
8	Total Sold Area (in Sq. Ft.) till the date of Completion Certificate/ Occupancy Certificate	H	2,54,016
9	Profiteered Amount	I = G * H	87,13,109

17. With regard to the aforesaid project, the DGAP also noted that the out of the total profiteering amount (including GST) Rs. 97,58,682/-, the Respondent has already passed on Rs. 2,14,28,004/- to the home-buyers. Since all the eligible home-buyers did not receive the commensurate

benefit, therefore, it was concluded that the benefit of ITC required to be passed on to the home-buyers comes to Rs. 12,47,667/-.

18. **Micasa:-**

The DGAP computed the ratio of credit availed to purchase value (in %) in the aforesaid project in following manner: -

S. No.	**Particulars**	**Pre-GST Period**	**Post-GST Period**
1	Purchase Value of Goods and Services (Excluding Taxes and Duties)	1,02,51,26,883	1,79,15,18,198
2	Credit of Service Tax availed	5,46,77,476	
3	Credit of VAT availed	1,20,79,743	
4	Total Credit Availed in Pre-GST Period	6,67,57,220	
5	ITC of GST Availed		24,10,17,529
6	**Ratio of Credit Availed to Purchase Value (in %)**	**6.51**	**13.45**

19. On the basis of the aforesaid computation, the profiteered amount as computed as under: -

S. No.	**Particulars**		**Post-GST**
1	Period	A	July, 2017 to March, 2024
2	Ratio of Credit availed to Purchase Value as per Table - A above (%)	B	6.51/13.45
3	Increase in input tax credit availed Post-GST (%)	C	6.94
4	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	1,79,15,18,198

5	Total Savings on account of additional ITC benefit	E = D*C/100	12,43,31,363
6	Total Saleable Area (in Sq. Ft.)	F	12,26,889
7	Total Saving Per Sq. Ft.	G = E/F	101.34
8	Total Sold Area (in Sq. Ft.) till the date of Completion Certificate/ Occupancy Certificate	H	6,74,684
9	Profiteered Amount	I = G * H	6,83,71,614

20. With regard to the aforesaid project, the DGAP also noted that the out of the total profiteering amount (including GST) Rs. 7,65,76,208/-, the Respondent has already passed on Rs. 13,25,86,846/- to the home-buyers. Since all the eligible home-buyers did not receive the commensurate benefit, therefore, it was concluded that the benefit of ITC required to be passed on to the home-buyers comes to Rs. 20,07,648/-.
21. The DGAP concluded that the out of total profiteering amount of Rs. 7,65,76,208/- the Respondent has already passed on Rs. 13,25,86,846/- to its home-buyers.
22. The DGAP concluded that the Respondent has contravened the Section 171(1) of the CGST Act, 2017.
23. The period covered by the current investigation is from 01.07.2017 to 31.03.2024.
24. The Principal Bench of the GST Appellate Tribunal (for Short "**GSTAT**"), constituted under sub-section (3) of section 109 of CGST Act, has been empowered to examine Anti-Profiteering cases w.e.f. 01.10.2024, *vide* Notification No. 18/2024-Central Tax dated 30.09.2024.
25. A notice was issued to the Complainant and the Respondent calling upon their written submissions against the DGAP report dated 09.12.2024.

26. The Respondent filed its detailed written submissions against the DGAP report.
27. During the final hearing of the matter, the learned Counsel for the Respondent, pointed out the following issues: -
28. The unsold units form part of the ongoing projects and have not been subjected to any transaction or consideration post-GST implementation, there is no occasion for any profiteering to have occurred in respect thereof. The Respondent has further submitted that the benefit, if any, attributable to such unsold units shall be passed on to the ultimate purchasers at the prevailing rates, and the Respondent is ready and willing to furnish an affidavit to this effect before this Tribunal.
29. Cancellation of 13 units occurred even after the issuance of the DGAP Report. Retention of such units in the computation would result in an artificially inflated profiteered amount and a liability *ultra vires* Section 171 of CGST Act, 2017.
30. The Respondent has submitted that units booked after 01.07.2017 are fresh, independent commercial transactions concluded entirely within the GST regime, where the price agreed upon already factored in the prevailing GST structure, availability of ITC, and market-stabilized GST tax costs.
31. The Respondent has therefore submitted that an amount of Rs. 1,18,082/- (excluding GST) attributable to post-GST units must be excluded.
32. DGAP has failed to segregate flat buyers who have not paid any amount after the implementation of GST, and in some cases, have outstanding dues from the pre-GST period.
33. Per contra, it is submitted on behalf of the DGAP that the cancellation of 13 units took place after submission of the report of the DGAP, therefore, this aspect could not be taken into consideration at the time of the investigation.

34. With regard to the recipient who has not paid any consideration in pre-GST and post-GST period, the learned counsel for the Respondent fairly submitted that as and when he received the consideration from the concerned home-buyers they will collect the money as per the reduced rate of tax. They shall also file an affidavit before this Tribunal.
35. Having considered the pleading and the arguments advanced by the learned Counsel for the Respondent and the Authorised Representative of the DGAP, we are of the view that to meet the ends of justice, the DGAP may be directed to submit a supplementary report in the light of the factual objections raised by the learned Counsel for the Respondent as earlier noted above in para-No. 27 of this order.
36. Therefore, the DGAP is directed to submit its supplementary report within two months from today mentioning therein the accurate amount regarding the cancelled units, the effect on the amount of profiteering relating to those home-buyers who did not pay any consideration in pre and post GST regime. Further and about the units booked after introduction of GST.
37. The Respondent is directed to fully cooperate with the DGAP and furnish the documents and other materials as required from them for submission of supplementary report by the DGAP.
38. Let the matter be listed on 14.10.2026.
39. Order pronounced in open Court.

(Justice Mayank Kumar Jain)

(Sh. A. Venu Prasad)

Dated: 14.08.2026