



BEFORE THE COMPETITION COMMISSION OF INDIA

(AUTHORITY UNDER SECTION 171 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017)

Order No: -	11/2023
Date of Institution	24.02.2023
Date of Order	03.08.2023

In the matter of:

Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s Bhagwati Infra, 1306, Real Tech Park, Plot No. 39/2, Sector – 30A, Opp. Vashi Railway Station, Vashi, Navi Mumbai – 400705.

Respondent

Coram: -

Smt. Ravneet Kaur, Chairperson,
Dr. Sangeeta Verma, Member,
Sh. Bhagwant Singh Bishnoi, Member.

ORDER

1. The present Report dated 23.02.2023, has been received by the Competition Commission of India (**hereinafter referred to as the**

“Commission”) from the Director General of Anti-Profiteering **(hereinafter referred to as the “DGAP”)** after a detailed investigation as per the directions given under Rule 133(5) of the Central Goods and Service Tax Rules, 2017 **(hereinafter referred to as the “Rules”)** contained in erstwhile National Anti-profiteering Authority’s **(hereinafter referred to as the “NAA”)** Order No. 68/2022 dated 02.09.2022, passed in the project “Bhagwati Eminence” executed by M/s Bhagwati Infra, 1306, Real Tech Park, Plot No. 39/2, Sector – 30A, Opp. Vashi Railway Station, Vashi, Navi Mumbai – 400705. **(hereinafter referred to as “the Respondent”)**.

2. The DGAP vide his first Investigation Report dated 04.11.2020 had reported that the Respondent had profiteered an amount of Rs. 1,56,77,149/- while executing the ‘Bhagwati Eminence’ project which was required to be passed on to the home-buyers.
3. The NAA vide its Order No. 68/2022 dated 02.09.2022 had determined the profiteered amount as Rs. 1,56,77,149/- as the benefit of ITC was not passed on to the recipients by the Respondent during the period from 01.07.2017 to 31.09.2019 and ordered the Respondent to pass on the benefit.
4. Further, vide Para 27 of the aforesaid Order, the NAA directed the DGAP in terms of Rule 133(5) of the CGST Rules, 2017, to investigate profiteering in relation to projects other than the project “Bhagwati Eminence”, being executed by the Respondent, if any, under the provisions of Section 171 of the CGST Act, 2017. The contents of para 27 are reproduced below:

"27. In view of facts discussed hereinabove and the findings thereof, the NAA had a reason to believe that since the Respondent had been found to have contravened the provisions of Section 171 of the CGST Act 2017 in respect of the subject Project "Bhagwati Eminence" and hence there is every possibility that similar contravention might had taken place with his other projects. This NAA in terms of Rule 133 (5)(a) of the CGST Rules 2017 also directs the DGAP to investigate profiteering in relation to other Projects executed by the Respondent, if any, under the provision of section 171 of the CGST Act 2017".

5. In pursuance of the above directions the DGAP vide his Report dated 23.02.2023 has inter-alia submitted the following points: -
- a. That a Notice under Rule 129 of the CGST Rules, 2017 was issued on 15.09.2022, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the customers of the projects other than "Bhagwati Eminence", by way of commensurate reduction in prices and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all the supporting documents.
 - b. The period covered by the current investigation is from 01.07.2017 to 31.08.2022.
 - c. In reply to the notice of the DGAP, the Respondent replied that he had not started any project other than **Bhagwati Eminence** till date hence there was no benefit of ITC to be passed on to the customers. The Respondent also provided a copy of the financials for FY 2021-22 along with the reply.

- d. In order to verify Respondent's claim that he had not started any project other than "Bhagwati Eminence", the details of Respondent's projects registered with Maharashtra Real Estate Regulatory Authority (RERA) were checked online by the DGAP. From the Maharashtra RERA website, DGAP found that other than "Bhagwati Eminence", no other project of the Respondent was registered with Maharashtra RERA.
- e. To further verify the Respondent's contention, the DGAP had also sent a letter dated 19.10.2022 and subsequent reminders dated 29.11.2022, 12.01.2023, and 13.02.2023 to the jurisdictional Commissionerate (Belapur CGST Commissionerate, Navi Mumbai) for ascertaining whether Respondent had executed any project other than "Bhagwati Eminence" project. In response to the DGAP letter/reminders, the Additional Commissioner, CGST, Belapur Commissionerate vide letter dated 13.02.2023 had informed that the Respondent had not executed any other project other than "Bhagwati Eminence" project.
- f. The DGAP had concluded in his report that the Respondent had not undertaken any other construction project except the project "Bhagwati Eminence" which has already been investigated by the DGAP and profiteering determined vide NAA's Order No. 68/2022 dated 02.09.2022. Therefore, Section 171(1) of the CGST Act, 2017 which requires that "*any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices*", is **not applicable** in the present case.

6. This Commission has carefully considered the Report of the DGAP and the other material placed on record and finds that the DGAP, in pursuance to the Order No. 68/2022 dated 02.09.2022, has investigated the matter pertaining to the other projects executed by the Respondent in terms of Section 171 of the CGST Act, 2017 and the Rules made thereunder, so as to determine whether there had been any profiteering by the Respondent. Thereafter the DGAP has submitted that no other project has been executed by the Respondent except the project “**Bhagwati Eminence**”, profiteering in respect of which has already been determined by the NAA vide Order dated 02.09.2022.
7. The DGAP has furnished his Report dated 23.02.2023 to NAA, stating that no other projects is being executed by the Respondent and hence Respondent was not liable to pass on the benefit of Input Tax Credit and Section 171(1) of the Central Goods and Services Tax Act, 2017 requiring that “any reduction in the rate of tax on any supply of goods or services or the benefit of the input tax credit shall be passed on to the recipient by way of commensurate reduction in prices”, is **not applicable** in the present case.
8. The above fact has also been corroborated from the website of the Maharashtra RERA as well as the reply of the Additional Commissioner, CGST, Belapur Commissionerate as per the report of the DGAP.
9. In view of the above facts this Commission finds that the provisions of Section 171(1) of the CGST Act, 2017 are not attracted in the case of other projects of the Respondent and **therefore the present proceedings are hereby dropped.**

10. A copy of this order be sent to the Respondent and the DGAP free of cost. File of the case be consigned after completion.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Bhagwant Singh Bishnoi)
Member

Sd/-
(Sangeeta Verma)
Member

Certified Copy


(Jyoti Jindgar Bhanot)
Secretary CCI

F. No. M/AP/19/Bhagwati-OP/2023-Sectt. 1474-476 Date: 03.08.2023

Copy to:

1. M/s Bhagwati Infra, 1306, Real Tech Park, Plot No. 39/2, Sector – 30A, Opp. Vashi Railway Station, Vashi, Navi Mumbai – 400705.
2. The Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. Guard File.

o/c