

Tax alert: Builder has to pass on additional ITC benefits to the buyer – National Anti-Profiteering Authority

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Summary

The National Anti-Profitteering Authority (NAA) has recently upheld the case of profiteering on a builder by holding that the benefit of additional input tax credit (ITC) due to introduction of GST was not passed on to the flat buyers. The NAA upheld the anti-profitteering charge to the extent of 2.42% of taxable turnover representing additional ITC that had accrued to the builder.

Facts of the case

- An individual booked a flat in the Respondent's¹ project during pre-GST period. He filed an application before the standing committee on anti-profitteering alleging that the respondent had failed to pass the benefit of additional ITC on the sale of the flat post implementation of GST and consequently indulged in profiteering².
- The application was referred to the Directorate General of Anti-Profitteering (DGAP) for a detailed investigation.

DGAP's observations

- The DGAP observed that the percentage of ITC to total turnover of the respondent increased from 2.06% to 4.48% post implementation of GST.
- Accordingly, the DGAP observed that the Respondent had benefitted from additional ITC to the tune of 2.42% of the turnover.
- Thus, the DGAP concluded that as the benefit of additional ITC has not been passed to the ultimate consumer, the respondent has contravened anti-profitteering provisions under the GST laws to that extent. The amount of profiteering in this case was calculated at INR 3,69,26,963 crores.

NAA's observations and order

- **Additional ITC benefit:** The NAA, on perusal of the DGAP report, observed that the additional ITC benefit to the extent of 2.42% of the turnover has accrued to the respondent. The NAA, thus, confirmed the case of profiteering against the respondent in respect of the sale of flat.

- **Direction to reduce prices:** The NAA also directed the applicant to accordingly reduce the prices to be received from the buyers.
- **Imposition of penalty:** With regards to the imposition of penalty, the NAA observed that the respondent has deliberately and consciously violated anti-profitteering provisions by not only collecting extra amount from the buyers but also compelling the buyers to pay more GST on the additional amount realised.

Our comments

The NAA was formulated under the GST regime to ensure that benefit arising due to reduction in tax rate/ITC is passed on to the ultimate consumers. However, as the law does not prescribe any mechanism/methodology to determine the quantum of benefits to be passed on to the consumers, many taxpayers have come under the scanner of anti-profitteering provisions including various real estate, pharma and FMCG companies.

Recently, the Delhi High Court has granted a stay on the NAA's order against a real estate giant. At this juncture, it has become imperative that the government prescribe a detailed mechanism for computing the benefit to be passed on to the consumers so that litigation on these issues can be mitigated.

¹ M/s Paramount Propbuilt Pvt. Ltd.

² In contravention of provisions of Section 171 of the CGST Act

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