

NAA sets aside penalty for profiteering as no specific penalty provisions existed prior to 1 January 2020

21 August 2020



Summary

The National Anti-Profiteering Authority (NAA), in a recent case, has set aside penalty imposed on a respondent builder, who was held guilty for not passing the additional benefit of input tax credit (ITC) to buyers of his flats/plots. It held that penalty cannot be imposed in the instant case as no relevant penalty provisions were in existence during the period in which profiteering was committed.

Facts of the case

- The Directorate General of Anti-Profiteering (DGAP) had investigated on compliant against the respondent¹ and found that it had not passed on the benefit of additional ITC to its flat/plot buyers in its project².
- The DGAP thus concluded that the respondent had denied the benefit of ITC to the said buyers amounting to INR 41.82 lakhs pertaining to period **1 July 2017 to 31 August 2018** and accordingly indulged in profiteering³. Therefore, a notice imposing penalty was sent to the respondent⁴.

NAA's observations and ruling⁵

- **Violation of anti-profiteering provisions not covered:** The NAA observed that violation of anti-profiteering provisions is not covered under the said penalty provisions. In this regard, it held that:
 - 'Profiteered amount' is not a 'tax imposed' under the Goods and Services

Tax (GST) law, and therefore penalty as envisaged under said provision cannot be imposed for violation of anti-profiteering provisions.

- Penalty provision doesn't provide penalty for not passing on the benefits of tax reduction.
- **Penal provisions non-existent during investigation period:** The NAA observed that the specific penalty provisions for violation of anti-profiteering provisions have been added effective from 1 January 2020⁶. Therefore, the NAA stated that in absence of any penal provisions during the period of dispute, no penalty can be imposed for violation of anti-profiteering provisions.
- **Penalty proceedings dropped:** Accordingly, it directed withdrawal of notice issued for imposition of penalty and dropped the penalty proceedings launched against the respondent.

¹ M/s Eldeco Infrastructure & Properties Ltd.

² Eldeco County

³ Section 171(1) of the CGST Act, 2017

⁴ u/s 122(1)(i) of the CGST Act, 2017 r/w Rule 133(3)(d) of the CGST Rules, 2017

⁵ Order No. 43/2020 dated 14 August 2020

⁶ by inserting Section 171 (3A) of the CGST Act, 2017 vide Finance No.2 Act, 2019 made effective from 1 January 2020 vide Notification No. Notification No. 01/2020 – Central Tax dated 1 January 2020

Our comments

The relevant penal provisions for imposing penalty in case of violation of the anti-profiteering provisions were inserted recently under the GST law effective from 1 January 2020. The NAA has rightly held that the newly inserted provisions are substantive and cannot have retrospective effect.

This is a welcome ruling by the NAA wherein the taxpayer is held not liable to penalty for profiteering done prior to the insertion of specific penalty provisions. The ruling may set a precedent for other similar cases.

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI National Office Outer Circle L 41 Connaught Circus, New Delhi 110 001 T +91 11 4278 7070	NEW DELHI 6th floor, Worldmark 2, Aerocity, New Delhi – 110 037 T +91 11 4952 7400	AHMEDABAD 7th Floor, Heritage Chambers, Nr. Azad Society, Nehru Nagar, Ahmedabad – 380 015	BENGALURU 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, C V Raman Nagar, Bengaluru – 560 093 T+91 80 4243 0700	CHANDIGARH B-406A, 4th Floor, L&T Elante office Building Industrial area, Phase-I, Chandigarh 160 002 T +91 172 4338 000
CHENNAI 7th Floor, Prestige Polygon 471, Anna Salai, Teynampet Chennai - 600 018 T +91 44 4294 0000	DEHRADUN Suite No 2211, 2nd Floor Building 2000 Michigan Avenue, Doon Express Business Park, Subhash Nagar, Dehradun 248 002 T +91 135 264 6500	GURGAON 21st Floor DLF Square Jacaranda Marg, DLF Phase II, Gurgaon 122 002 T +91 124 462 8000	HYDERABAD 7th Floor, Block III White House Kundan Bagh, Begumpet Hyderabad 500 016 T +91 40 6630 8200	KOCHI 7th Floor, Modayil Centre Point, Warriam Road Junction, MG Road, Kochi 682 016 T +91 484 406 4541
KOLKATA 10C Hungerford Street 5th Floor, Kolkata 700 017 T +91 33 4050 8000	MUMBAI 16th Floor, Tower II One International Centre SB Marg, Prabhadevi (W) Mumbai 400 013 T +91 22 6626 2600	MUMBAI Kaledonia, 1st Floor, C Wing (Opposite J&J office) Sahar Road, Andheri East, Mumbai - 400 069 T +91 22 6176 7800	NOIDA Plot No. 19A, 7th Floor Sector – 16A, Noida 201 301 T +91 120 4855 900	PUNE 3rd Floor, Unit No 309 to 312, West Wing, Nyati Unitree Nagar Road, Yerwada Pune- 411 006 T +91 20 6744 8800

For more information or for any queries, write to us at contact@in.gt.com



Follow us @GrantThorntonIN



© 2020 Grant Thornton India LLP. All rights reserved.

“Grant Thornton in India” means Grant Thornton India LLP, a member firm within Grant Thornton International Ltd, and those legal entities which are its related parties as defined by the Companies Act, 2013.

Grant Thornton India LLP is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.