

No synchronisation with turnover required for passing ITC benefits - NAA

30 September 2020



Summary

The National Anti-Profiteering Authority (NAA), in a recent case, upheld profiteering against a builder and held that the benefit has to be computed on the basis of the additional input tax credit (ITC) as well as the turnover of the builder during the post-GST period. The NAA further held that computation of benefit has no connection with the percentage of work completed or percentage of the amount received or purchases made by the builder.

Thus, the NAA stated the home buyers cannot be compelled to wait till the completion of the project to avail benefit of ITC. Therefore, no synchronisation is required to be done between the ITC and the turnover while passing on the benefit of ITC.

Facts of the case

- An application against the respondent-builder¹ was received by the Directorate General of Anti-Profiteering (DGAP) alleging that it had not passed on the benefit of ITC to the applicant in respect of purchase of an apartment². Thus, the applicant alleged that the respondent had indulged in profiteering.
- The DGAP stated that the respondent has benefited from the additional ITC to the tune of 1.99% of the total turnover during July 2017 to April 2019. This benefit was required to be passed on to

the buyers by reducing the prices of the flats, which it has not done.

Accordingly, the DGAP confirmed profiteering to the extent of INR 9.7 lakh.

- The DGAP also stated that the respondent has profiteering to the tune of INR 3.04 crore in its another project by availing benefit of ITC of 3.62% of the total turnover during the same period.

NAA's observations and ruling³

- **Additional ITC accrued:** The NAA observed that the respondent has

¹ M/s Shapoorji Palonji (Relationship Properties Pvt. Ltd.)

² in respondent's project by way commensurate reduction in price

³ Order No. 59/2020 dated 31 August 2020

benefitted from additional ITC to tune of 1.99% of total turnover in respect of this project during July 2017 to April 2019 and to tune of 3.62% during July 2017 to April 2019 in its another project.

- **No connection with work done:** The benefit must be computed on the basis of the additional ITC and the turnover of the respondent during the post-GST period. The NAA held that computation of benefit has no connection with the percentage of work completed or percentage of the amount received or purchases made by the respondent.
- **No synchronisation required with turnover:** The NAA further stated that the buyers cannot be compelled to wait till the completion of the project to avail benefit of ITC. Therefore, no synchronisation is required to be done between the ITC and the turnover of the respondent while passing on the benefit of ITC.
- **Profiteering upheld:** The NAA, thus, upheld profiteering against the

respondent and ordered that the same shall be paid to buyers along with 18% interest⁴ within three months from the date of the order⁵. Further, ordered that the respondent shall reduce the prices to be realised from the buyers of the flats of the above projects commensurate with the benefit of ITC received by him⁶.

⁴ from the date the amount was collected from them till the date of making payment

⁵ U/s 171(1) of the CGST Act, 2017 read with Rule 133(3)(c) of the CGST Rules, 2017

⁶ Rule 133(3)(a) of the CGST Rules, 2017

Our comments

The GST law does not prescribe mechanism/methodology to determine the quantum of benefit to be passed on. Non-availability of the prescribed mechanism is one of the major reasons for non-compliance with anti-profiteering provisions.

Various writ petitions have already been filed before high courts against the orders pronounced by the NAA. The Delhi High Court recently heard a batch of 37 writ petitions filed in this regard and directed clubbing of all the questions on constitutional validity in the writ petitions. It also directed continuation of interim orders and posted the matter for final hearing to 3 November 2020.

It is also pertinent to note that the Central Board of Indirect Taxes and Customs has recently extended time limit for completion or compliance of any action by authorities under the anti-profiteering provisions falling during 20 March 2020 to 29 November 2020 up to 30 November 2020.

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 Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly 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.