

Director General of Anti-Profiteering v. MM Construction

Case number: NAPA/155/PB/2025

Citation: No neutral or reporter citation printed for this judgment in the identified official PDF.

Decision date: 28 July 2026

Real-estate ITC benefit: additional works cannot replace price reduction; recipient interest and case-specific penalty exclusion

Court: Goods and Services Tax Appellate Tribunal, Principal Bench, New Delhi, Anti-Profiteering Division

Bench: Shri A. Venu Prasad, Member (Technical), Single Bench, Court IV

Decision stage: Final reasoned judgment directing Rs. 8,18,899, comprising Rs. 7,31,160 plus Rs. 87,739 GST, to eligible homebuyers with 18% collection-to-payment interest; no Section 171(3A) penalty on the stated facts.

01 Facts of case and issues

A flat purchaser complained that MM Construction had not passed on the additional input tax credit arising with GST from 1 July 2017 in the Baidyanath project at 578, Lake Gardens, Kolkata. Following an initial DGAP report dated 8 December 2021, CCI directed reinvestigation in light of the Delhi High Court's Reckitt Benckiser judgment of 29 January 2024. DGAP's fresh report dated 27 November 2024 covered 1 July 2017–2 January 2020, the latter being receipt of the Occupancy Certificate. The complaint and investigation history are distinct from the final judgment of 28 July 2026.

Table A records pre-GST purchase value of Rs. 29,07,495 and nil credit, post-GST purchase value of Rs. 95,71,143, and additional ITC of Rs. 10,83,190. Allocation over 8,154 sq. ft. of total saleable area and 5,504 sq. ft. sold up to the certificate yielded Rs. 7,31,160 for the sold area. DGAP added 12% GST of Rs. 87,739, giving Rs. 8,18,899. These are the adopted source figures; full purchase records, underlying ITC documents, the complete DGAP report and collection-date data are not appended.

The respondent did not challenge entitlement to additional ITC or the DGAP methodology. It argued that free structural upgrades and fittings had delivered an equivalent or greater economic benefit, supported by invoices and project accounts, without reducing agreement prices. It invoked commercial practicality, alleged absence of unjust enrichment, earlier additional-grammage cases and pending Supreme Court challenges to the High Court observations. These were its submissions, not findings that the statutory duty had been discharged.

01 Facts of case and issues

The respondent's 29 June 2026 affidavit described eight flats: two allotted to the landowner, five sold/allotted to homebuyers in flat numbers 3–7, and flat 8 retained by the respondent. Its table has five homebuyer-flat entries, one jointly owned, rather than eight award recipients. It claimed additional works worth Rs. 10,14,826 against a rounded buyer-table ITC total of Rs. 7,31,151.36, showing an aggregate excess of Rs. 2,83,674.64 while also showing shortfalls for two flats. The Departmental Representative's earlier submission that only two homebuyers remained payable after considering works, and the direction to file an updated affidavit, are procedural history; they did not become the final relief. The complainant did not attend despite notice, and the Tribunal decided the record and contested defence.

Pinpoint: Complaint, reinvestigation and period: paragraphs 1–10, physical pp. 2–6. Table A: paragraph 8.3, p. 5. Defences and interim hearing: paragraphs 11–12, pp. 6–9. Affidavit, five buyer-flat entries and non-appearance: paragraphs 13–15, pp. 9–11; undisputed computation: paragraphs 20 and 30, pp. 13 and 18.

02 Discussion by Hon'ble Tribunal

The Tribunal frames five issues and supplies its own findings from paragraphs 17–42. On additional ITC, paragraphs 17–21 apply Section 171(1) to the admitted post-GST entitlement and hold that the benefit must reach eligible homebuyers through a commensurate price reduction. The dispute is principally about the means of passing on that benefit, rather than whether credit accrued.

For the decisive works defence, paragraphs 22–28 apply Reckitt Benckiser paragraphs 131–135. GSTAT reads the prescribed price-reduction duty as sector-neutral and rejects the proposed distinction between FMCG supplies and real estate. In paragraph 27 it expressly reasons that additional structural works and fittings cannot satisfy that mode even if actually executed and worth more than the ITC benefit. The outcome does not depend on finding the works fictitious or their invoices fabricated. The claimed contractual inconvenience and commercial equivalence therefore do not produce a set-off. Paragraphs 29–32 hold that the statutory obligation remains undischarged. Neither the claimed Rs. 10,14,826 works value nor the table's excesses and shortfalls are netted into the final award.

Paragraphs 33–35 address GST separately: the purchase/credit computation excludes GST, but the higher consideration collected from homebuyers included it. Applying Reckitt Benckiser paragraph 157, GSTAT includes the corresponding 12% GST in the amount to be returned. Paragraphs 36–39 then apply Rule 133(3)(b), with reference to Reckitt Benckiser paragraph 153, for 18% annual interest from collection of the higher amount until actual payment to the buyers. This is recipient restitution, not a Central/State Consumer Welfare Fund allocation, and there is no 28 June 2019 interest-start limitation in this order.

On penalty, paragraphs 40–42 record that Section 171(3A) commenced on 1 January 2020. Although investigation extends through 2 January 2020, the Tribunal finds the construction was completed and the Occupancy Certificate had been applied for before 1 January. It treats the contravening conduct as already concluded and excludes penalty on those particular facts. The reasoning does not say that the entire investigation period predates commencement or grant a general exemption to all projects ending after it. The certificate-application date is not specified. Paragraph 42's statement that the proceedings culminated just one day after insertion is a source wording anomaly against this 2026 final judgment; it is not silently replaced with an invented date or a corrected procedural history.

02 Discussion by Hon'ble Tribunal

The two principal tables require a rounding distinction. Table A displays Rs. 132.84 per sq. ft.; multiplying that rounded figure by 5,504 gives Rs. 7,31,151.36, matching the respondent's buyer-table total. Using the unrounded Rs. $10,83,190 \div 8,154 \times 5,504$ gives about Rs. 7,31,159.892, which rounds to the adopted Rs. 7,31,160. Thus the Rs. 8.64 displayed-table difference is arithmetically consistent with intermediate rounding; it is not a second liability or a works deduction. The source does not spell out this reconciliation, and this limited arithmetic check does not authenticate the full underlying computation. Paragraph 33 describes a purchase-value-ratio methodology, while Table A shows the final saleable-area allocation; the complete workings are still needed to audit their relationship. The respondent's buyer-table figures are not substituted for DGAP's final recipient determination.

Pinpoint: Issues and ITC findings: paragraphs 16–21, physical pp. 11–13. Own rejection of works/sector defence: paragraphs 22–32, pp. 13–18. GST: paragraphs 33–35, pp. 19–20. Recipient interest: paragraphs 36–39, pp. 20–21. Penalty and wording anomaly: paragraphs 40–42, pp. 21–22. Rounding comparison: Table A, p. 5, and paragraph 13.3 table, p. 10.

03 Judicial decision and operative relief

GSTAT found failure to pass on the additional ITC in the manner required by Section 171(1). Operative paragraph 44 directs MM Construction to pay Rs. 7,31,160 plus 12% GST of Rs. 87,739, aggregating to Rs. 8,18,899, to the eligible homebuyers as determined by DGAP. This aggregate already includes the specified GST; it is not increased by another GST layer or reduced by claimed additional works.

The amount carries interest at 18% per annum under Rule 133(3)(b), from the date of collection of the higher amount until actual payment. No rupee interest total, common assumed collection date or fixed payment date is provided. No Section 171(3A) penalty is leviable in the facts found in paragraphs 41–42. The reproduced thirty-day proviso to the penalty provision is not a separate operative refund deadline or the basis of that exclusion.

Paragraph 45 requires compliance to be reported to the Tribunal within the period prescribed under the applicable statutory provisions, without stating its numerical length. This note does not insert a three-month reporting or refund period. Copies go to the parties and jurisdictional CGST/SGST Commissioner for necessary action; the matter is disposed of and the order pronounced in open court. The typed and administrative order date is 28 July 2026, while the visible digital-signature annotation on the final page is dated 29 July 2026. That annotation is not treated as a different decision date, and cryptographic validity is not certified.

Pinpoint: GST-inclusive amount: paragraph 35, physical p. 20; penalty exclusion: paragraphs 40–42, pp. 21–22. Operative failure, recipient payment, interest and reporting: paragraphs 43–45, pp. 22–23, also administrative summary p. 2. Circulation, disposal, pronouncement and visible dates: paragraphs 46–48 and final-page annotation, p. 23.

04 In favour of

Mixed. The authority and eligible homebuyers prevail on the price-reduction duty, rejection of the works set-off, Rs. 8,18,899 GST-inclusive recipient payment and 18% interest. MM Construction obtains exclusion of Section 171(3A) penalty on the Tribunal's specific pre-commencement conduct findings. The order does not confirm payment, award sums to all eight flats, or accept the respondent's aggregate-excess defence.

Final substantive mixed-result judgment: contested legal compliance through additional works is rejected, recipient restitution with GST and interest is ordered, and penalty is excluded on case-specific temporal findings. The administrative Confirmed label and terminal disposal are not the basis for identifying its substantive merits. Final here does not establish absence of an appeal or stay.

Pinpoint: Own issue determinations: paragraphs 17–42, physical pp. 12–22; operative directions: paragraphs 43–48, pp. 22–23.

05 AKHB REVIEW POINT

AKHB analysis: For an additional-ITC pass-through exercise, document the reduction reaching each eligible recipient separately from any upgraded specification, complimentary fitting or extra work. On this reasoning, proof that free works were real and valuable cannot by itself cure the wrong mode of passing on the statutory benefit. A party seeking to distinguish the precedent must address that legal premise, rather than only produce higher aggregate expenditure or net one buyer's claimed excess against another's shortfall.

Reconcile the complete credit and purchase workings, saleable/sold areas, buyer allocations, GST and collection dates before calculating execution amounts. Keep intermediate rounding visible and retain the ordered principal rather than silently replacing it with a rounded table total. Do not infer eight recipients from eight flats or use the respondent's works comparison as the final award schedule.

For penalty, separate actual completion, the certificate application, receipt of the certificate, the investigation cutoff and the decision date. Preserve the paragraph 42 wording anomaly and the visible next-day signature date rather than repairing them editorially. Obtain the applicable reporting requirement and any later judicial or execution direction; paragraph 45 alone supplies no numerical deadline. Current treatment of the cited High Court judgment and this order requires its own verification.

Pinpoint: AKHB commentary based on paragraphs 8, 11–13, 20–32 and 35–48, physical pp. 4–10, 13–18 and 20–23.

Sources and limitations

Relevant provisions

CGST Act 2017: Section 171 and Section 171(1), additional-ITC duty and prescribed commensurate price reduction; CGST Act 2017: Section 171(3A), penalty excluded on the specific pre-1 January 2020 conduct findings; CGST Act 2017: Section 171(2), referred to within the reproduced penalty provision; CGST Act 2017: Section 109(3), Principal Bench constitution context; CGST Rules 2017: Rule 128, complaint history; CGST Rules 2017: Rule 129 and Rule 129(1), investigation and reinvestigation history; CGST Rules 2017: Rule 133(3)(b), recipient return and 18% collection-to-payment interest; CGST Rules 2017: Rules 113(1) and 115, administrative Form GST APL-04A heading only; Finance (No. 2) Act 2019, insertion of Section 171(3A) as recorded by the Tribunal; Central Tax Notification 18/2024 dated 30 September 2024, Principal Bench empowerment; Legal Metrology (Packaged Commodities) Rules 2011: former Rule 2(m) and Rule 6(1)(e), appearing only in quoted Reckitt Benckiser paragraph 134, not independently applied to this real-estate project.

Statutory note

Targeted official primaries verify the Section 171 framework, 1 January 2020 penalty commencement and Principal Bench empowerment. Historical official rules already provide 18% recipient-return interest under Rule 133(3)(b), distinct from the later express Fund-interest amendment. Reckitt paragraphs 131–135 prescribe price reduction rather than substitute amenities or free supplies; GSTAT applies that principle to this real-estate defence. Its per-SKU and Legal Metrology wording belongs to the reproduced retail discussion, not an independently imposed apartment-pricing rule. The penalty exclusion remains case-specific because construction and the Occupancy Certificate application preceded 1 January 2020, although investigation ended on 2 January. Paragraph 45 supplies an applicable-statutory-period reporting requirement without a number. These checks do not certify the correctness of every application or a complete current-law position.

Treatment note

A fresh normal-TLS official download exactly matches the collected original. Bounded official-domain/name/docket searches, including Calcutta High Court variants, on 13 October 2026 identified no authenticated later order modifying, staying, reviewing or reversing this precise judgment. Search absence is not a no-appeal/no-stay or enforceability certificate; no complete case-status docket was audited. The respondent's pending-SLP submission is distinct from verification: the connected Supreme Court order of 31 July 2024 is procedural only. A later official May 2026 listing establishes no hearing outcome, and Delhi High Court's 9 September 2026 record of no Supreme Court interim order is historical and not case-specific clearance. No Supreme Court merits affirmation, recipient payment or compliance is certified.

Scope of source review

One final Principal Bench anti-profiteering judgment concerning the Baidyanath project at 578, Lake Gardens, Kolkata. The Tribunal independently decides the legally permissible mode of passing on ITC, rejects the additional-works defence, and determines GST, recipient interest and penalty. Undisputed underlying computation does not make this merely a report-acceptance or compliance order. No universal real-estate formula or all-GSTAT coverage is claimed.

Identity note

NAPA/155/PB/2025; reference ZA070010726000142H; A. Venu Prasad, Member (Technical), Court IV. Administrative and typed date 28 July 2026; visible final-page digital-signature annotation 29 July 2026, without cryptographic validation. Caption uses MM Construction; paragraph 1 uses MM Constructions. Project is Baidyanath, 578, Lake Gardens; the complainant's address in paragraph 1 is separately printed as 587. Five homebuyer-flat entries among eight flats, including one jointly owned buyer entry. Operative total Rs. 8,18,899 includes Rs. 87,739 GST; recipient interest is 18% from collection to payment. Table rounding, paragraph 33 methodology description and paragraph 42 timing wording are qualified. No numerical paragraph 45 deadline or later compliance is certified.

Primary source

Source description: Complete 23-page official corpus PDF, including administrative summary and final reasoned judgment; all original pages read and individually viewed by the AI author.

Official source: [Open source document](#)

Source pages: 23

Outcome type: mixed

Additional source

CGST Act 2017, official India Code consolidation

Source document: [Open source document](#)

Pinpoint: Targeted official web-extracted Section 171 and insertion/commencement footnotes, physical pp. 122–123; not a fresh full-PDF or complete current-law review.

Official CGST Rules consolidation, September 2018

Source document: [Open source document](#)

Pinpoint: Targeted physical pp. 106–107: Rule 133(3)(b) recipient-return interest and historical footnote; consolidation rather than original Gazette.

Central Tax Notification 01/2020, 1 January 2020

Source document: [Open source document](#)

Pinpoint: Complete one-page instrument: Finance (No. 2) Act 2019 Section 112 commences on 1 January 2020.

Central Tax Notification 18/2024, 30 September 2024

Source document: [Open source document](#)

Pinpoint: Complete one-page instrument: Principal Bench competence from 1 October 2024.

Reckitt Benckiser, Delhi High Court, 29 January 2024

Source document: [Open source document](#)

Pinpoint: Targeted paragraphs 127–135, 153–158 and 163: real-estate allocation, prescribed benefit mode, interest, GST and individual merits. No full 142-page reread claimed.

Connected Supreme Court procedural order, 31 July 2024

Source document: [Open source document](#)

Pinpoint: All five pages checked; listing and pleadings directions, including the Reckitt docket, not merits affirmation or present-day status certification.

Delhi High Court connected procedural order, 9 September 2026

Source document: [Open source document](#)

Pinpoint: Targeted physical pp. 45–46, paragraphs 1–10: pending constitutional challenges and historical no-interim-order record; no demonstrated challenge to this MM judgment or present no-stay certificate.

Disclosures and source rights

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