

**Directed to refund the payment deposited during search proceedings without issuing acknowledgement being not voluntary**

The Hon'ble Delhi High Court in *M/s. Vallabh Textiles v. Senior Intelligence Officer And Ors [W.P.(C) 9834/2022 dated December 20, 2022]* has held that the amount deposited during search proceedings without an acknowledgement of acceptance issued in **Form GST DRC-04** as mandated under Rule 142 of the Central Goods and Services Rules, 2017 ("**the CGST Rules**") is involuntary thus, directed to be refunded.

**Facts:**

M/s Vallabh Textiles ("**the Petitioner**") is in the business of trading in Ready Made Garments and is also engaged in selling such goods on behalf of third parties in the domestic market, on a commission basis. It is alleged by the Revenue Department ("**the Respondent**") that the Petitioner sold goods in cash on behalf of two entities during the period between July 2017 and February 2022 and earned a commission of INR 7.50 Crores for which the Petitioner has not paid tax.

Thereafter, a search was conducted at the unregistered premises of Petitioner on February 16 and 17, 2022. The Respondent during the search found a ledger which contained all the details of the cash sales. Evidently, a Panchnama was created with signature of two independent witnesses. A search was also conducted at the premises of two entities to which the Petitioner sold goods. The Respondent stated that the two entities voluntarily deposited INR 2.37 Crores via a prescribed challan i.e., DRC-03, dated February 17, 2022, which included tax, interest and penalty and the Petitioner deposited INR 1,80,10,000/- which also included tax, interest and penalty.

The Petitioner submitted that the amount deposited by them is not voluntary and were a conduct of coercion. Further, the copies of documents have not been furnished till today, the

search was carried out and the CCTV cameras were switched off and also, the enquiry conducted on February 24, 2022 was not backed by camera recording. The deposit made during the search was in contravention of the provisions of Rule 142(1A) and Rule 142(2) of the CGST Rules as there was no notice issued by the proper officer, ascertaining the tax, interest and penalty payable by the Petitioner and there was no acknowledgement of acceptance issued in Form GST DRC-04.

**Issue:**

Whether the amount deposited by the Petitioner during search proceedings was voluntary or not?

**Held:**

The Hon'ble Delhi High Court in ***W.P.(C) 9834/2022*** held as under:

- Observed that, the payments were made in the prescribed form i.e., Form GST DRC-03, however, no document has been placed on record by the Respondent demonstrating acknowledgement of having accepted the payment.
- Further observed that, the deposits were made when the search had not even concluded, thus, the payment was not voluntary. The deposits made were not aligned with provisions of Section 73(5) or of Section 74(5) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**").
- Noted that, the malice of officials seeking to recover tax dues (in contrast to voluntary payments being made by assesses towards tax dues) during search, inspection or investigation was sought to be addressed by the GST-Investigation, CBIC via Instruction No. 01/2022-2023 dated May 25, 2022.

- Relied on the judgement of Hon'ble Gujarat High Court in the matter of ***Bhumi Associate v. Union of India MANU/GJ/0174/2021***, wherein it was held that no recovery of tax should be made during search, inspection or investigation unless it is voluntary.
- Held that, failure to follow the prescribed procedure, concludes that the deposit of tax, interest and penalty was not voluntary.
- Directed the, Respondents to return Rs.1,80,10,000/- to the Petitioner along with interest at the rate of 6% (simple) per annum.

**Our comments:**

The Hon'ble Karnataka High Court in ***M/s Bundl Technologies Private Limited v. Union of India [WP 4467/2021 (T-RES) dated September 14, 2021]*** has held that assessee's payment made as goodwill gesture during investigation cannot be taken as self-ascertained tax. Further, directed the Revenue Department to refund money deposited during the investigation.

In this regard, the Hon'ble Punjab & Haryana High Court in ***Himanshu Infraprojects Pvt. Ltd. v. Commissioner, CGST [CWP No. 11407 of 2020 (O&M) dated January 18, 2021]*** set aside the order attaching the bank account of the assessee on the ground that, amount had been deposited by assessee under coercion, which as per the revenue department was deposited voluntarily, whereas, neither any demand nor SCN was pending at that time. It was held that, a person whose property has been provisionally attached can file objections and if the written order is not communicated to him, he would not be in a position to know the reasons to arrive at the conclusion that it was in the interest of the Revenue to attach the property. Further, directed the Revenue Department to refund the amount after retaining 10% of the duty demanded.

Furthermore, the Hon'ble Madras High Court in ***Shri Nandhi Dhall Mills India Pvt. Ltd. v. Senior Intelligence Officer, DGGST & Ors. [W.P. No. 5192 of 2020 and WMP. No. 6135 of 2020 dated April 07, 2021]*** has held that merely because the assessee had signed a statement admitting

tax liability under the stress of investigation and had also made a few payments as per the statement, cannot lead to self-assessment or self-ascertainment. The ascertainment contemplated under Section 74(5) of the CGST Act is of the nature of self-assessment and amounts to a determination by it which is unconditional, and not one that is retracted. Thus, the understanding and application of Section 74(5) of the CGST Act is wholly misconceived. Further directed the Revenue Department, to refund the amount of INR 2 crore collected from the assessee during the investigation.

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