



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

D.B. Civil Writ Petition No. 2189/2022

M/s. Dhariwal Products, E-106, B-1, Marudhar Industrial Area,  
Basni 2nd Phase, Jodhpur Through Proprietor Nitin Dhariwal S/o  
Shri Sushil Dhariwal, Aged About 41 Years, Resident Of 6A-8/9,  
Navkar Society, Shastri Nagar, Jodhpur, Rajasthan 342003.

----Petitioner

Versus

1. Union Of India, Through Revenue Secretary, Department  
Of Revenue, Ministry Of Finance, Government Of India,  
New Delhi 110001.

2. Central Board Of Indirect Taxes And Customs,  
Department Of Revenue, Government Of India Through  
Commissioner, North Block, Central Secretariat, New  
Delhi, Delhi 110001.

3. Directorate General Of Gst Intelligence (Dggi) Hqrs,  
Through Principal Director, 1St And 2Nd Floor, Wing  
Number 06, West Block, 08 Rk Puram, New Delhi, Delhi  
110066.

4. Directorate General Of Gst Intelligence (Dggi), Jaipur  
Zonal Unit, Jaipur, C-62, Sarojini Marg, Panch Batti, Ashok  
Nagar, Jaipur, Rajasthan 302001 Through Additional  
Director General.

5. Senior Intelligence Officer, Dggi, Jaipur Zonal Unit, Jaipur,  
C-62, Sarojini Marg, Panch Batti, Ashok Nagar, Jaipur,  
Rajasthan 302001.

सत्यमेव जयते

----Respondents

---

For Petitioner(s) : Mr. Vikas Balia, Senior Advocate,  
assisted by Mr. Sharad Kothari, Mr.  
Mayank Taparia and Mr. Priyansh  
Arora

For Respondent(s) : -

---

**HON'BLE MR. JUSTICE SANDEEP MEHTA  
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI**

**Order****09/02/2022**

By way of the instant writ petition, the petitioner seeks to assail the action of the respondent GST Department and its officials in conducting search and seizure of the petitioner's premises, coercing the petitioner to deposit a huge sum of Rs.11.5 crores during the course of search operations held on 05-06.01.2022 as being in gross contravention of the mandatory requirement of Section 74 of the CGST Act.

Mr. Vikas Balia, learned Senior Advocate assisted by Mr. Sharad Kothari, Mr. Mayank Taparia and Mr. Priyansh Arora, urges that the procedure adopted by the respondent officials while undertaking search operations in the petitioner's premises without prior intimation is totally illegal, unjust and highhanded. The GST Intelligence Officer, though present at the residence of the petitioner, gave a sham notice to the petitioner's representative for appearance in the factory premises and thereafter forcibly extracted a confession from him. The petitioner was forced to deposit a sum of Rs.11.5 crores towards alleged GST evasion even though there is no evidence of such short payment/evasion. He urges that no sooner the petitioner's representative got the opportunity, he made a retraction of the statement. As the statement has been retracted, the respondents are required to adopt the mandatory procedure provided under Section 74 of the CGST Act, but rather than adhering to the said procedure, repeated notices are being issued to the petitioner's representative under Section 70 of the CGST Act and he apprehends arrest on appearance before the respondent officers, if their illegal demand of payment of GST is not acceded to. He



urges that even the amount which has already been deposited is not a voluntary deposit as the petitioner seriously disputes the liability and thus, the procedure under Section 74 of the CGST Act would come into fray. Once this procedure is adopted, the respondents would be required to refund the amount already extracted from the petitioner and that is why the GST authorities are bypassing the lawful procedure and are trying to extract more money from the petitioner under the facade of it being a voluntary deposit. Mr. Balia further submits that the liability of the petitioner towards non-payment/evasion of GST has not been determined and without doing so, the respondents are pressurizing the petitioner to voluntarily deposit the amount or to face the consequence of arrest. He, thus, urges that the impugned notices are grossly illegal and amount to an abuse of power by the GST officials. In support of his contention, Mr. Balia has placed reliance on the following judgments :-

**(1) M/s. Bhumi Associate Vs. Union of India through the Secretary [2021 (2) TMI 701] - Gujarat High Court**

**(2) Deem Distributors Private Ltd. Vs. Union of India [(2021) 87 GST 523] - Telangana High Court**

We have heard and considered the submissions advanced at bar and have gone through the material placed on record. We have carefully perused the statutory provisions and the judgments cited at bar. Prima facie, it appears that the impugned action has been resorted to without adhering to the procedure provided under Section 74 of the CGST Act. As the petitioner's representative claims to have retracted from the



confession, the voluntary nature of deposit of GST pursuant to the search proceedings dated 05-06.01.2022 is seriously disputed, there is merit in the contention of Mr. Balia that the procedure provided under Section 74 of the CGST Act would have to be followed. Once this procedure is adopted, the respondent authorities would not be able to procure allegedly short paid GST amounts by branding it to be a voluntary deposit and that is why a dubitable procedure of issuing summons to petitioner under Section 70 of the CGST Act is being adopted even though the petitioner's/representative's statement had already been recorded on the date of inspection/search itself.

The matter requires consideration.

Issue notice of the writ petition as well as the stay petition to the respondents. Rule is made returnable on 10.03.2022.

It is directed that till next date of hearing :-

(1) No coercive steps shall be taken against the petitioner/its representatives in furtherance of the search/seizure operations dated 05.01.2022/06.01.2022 and the summons issued in pursuance thereof;

(2) the petitioner shall not be forced to deposit any amount towards GST without adhering to the procedure provided under Section 74 of the CGST Act.

List on 10.03.2022.

**(VINOD KUMAR BHARWANI),J**

**(SANDEEP MEHTA),J**

36-Pramod/-

**SAG**