



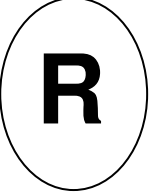
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13<sup>TH</sup> DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 9890 OF 2023 (T-RES)



**BETWEEN:**

SRI J RAMESH CHAND  
S/O LATE JAWAHARLAL  
AGED ABOUT 67 YEARS,  
PROPRIETOR M/S MILLION LIGHTS  
HAVING RESIDENT AT NO.221/24  
34<sup>TH</sup> CROSS, 6<sup>TH</sup> MAIN, 4<sup>TH</sup> BLOCK,  
JAYANAGAR  
BENGALURU-560 001  
ALSO HAVING ITS PLACE OF BUSINESS  
AT NO.32/1, 2<sup>ND</sup> AND 4<sup>TH</sup> FLOOR  
SIDDAIAH ROAD, WILSON GARDEN  
BENGALURU - 560 027.

...PETITIONER

(BY SRI.BHARAT RAICHANDANI, ADV. FOR SRI. RAGHUL PIRANESH,  
SRI. CHANDRA KIRAN, SRI. VISHWARANJAN, ADVOCATES)

**AND:**

1. UNION OF INDIA  
THROUGH ITS SECRETARY,  
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
MINISTRY OF FINANCE  
NORTH BLOCK, CABINET SECRETARIAT  
RAISINA HILLS  
NEW DELHI-110 001.
2. COMMISSIONER SOUTH GST  
CUSTOMS AND CENTRAL EXCISE  
DEPARTMENT HAVING OFFICE AT  
XHJ2 PR8 QUEENS RD  
SAMPANGI RAMA NAGAR  
BENGALURU - 560 001.





3. INSPECTOR OF CENTRAL TAX  
GST WEST COMMISSIONERATE HAVING  
ITS OFFICE AT BMTc BUS STAND,  
1<sup>ST</sup> FLOOR, TTMC KANAKAPURA ROAD  
BENGALURU-560 070.
4. INTELLIGENCE OFFICER  
DGGI BZU BENGLAURU  
HAVING OFFICE AT SP ENCLAVE NO.112,  
KENGALAHANUMANTHIAHA NARJUNA ENCLAVE  
RAJARAM MOHAN ROY EXTENSION  
SUDHAMANAGR, BENGALURU-560 027.

...RESPONDENTS

(BY SMT. ANUPARNA BORDOLOI.,ADVOCATE FOR R-1  
SRI. JEEVAN NEERALAGI, ADVOCATE FOR R-2 & R-3  
SRI. M.N. KUMAR, ADVOCATE FOR R-4)

THIS W.P IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE PAYMENT OF RS.10,00,00,000/- (RUPEES TEN CRORES TOTALLY) ALLEGEDLY VOLUNTARILY MADE BY THE PETITIONER TOWARDS THE GOODS AND SERVICE TAX IN THE FOLLOWING MANNER (ANNEXURE - A, A1, A2 AND A3) DT. 24.03.2023

ACT	-	AMOUNT	-	DEBIT ENTRY NO.	-	DEBIT ENTRY DATE	CGST	-
70,00,000	-	DC2903230298599	-	24.03.2023	CGST	-	70,00,000	-
DC2903230298599	-	24.03.2023	CGST	-	60,00,000	-	DC2903230298599	-
24.03.2023	CGST	-	1,20,00,000	-	DC2903230298668	-	24.03.2023	CGST
1,40,00,000	-	DC2903230298668	-	24.03.2023	CGST	-	1,40,00,000	-
DC2903230298668	-	24.03.2023	CGST	-	60,00,000	-	DC2903230298712	-
24.03.2023	CGST	-	70,00,000	-	DC2903230298712	-	24.03.2023	CGST
70,00,000	-	DC2903230298712	-	24.03.2023	CGST	-	60,00,000	-
DC2903230298768	-	24.03.2023	CGST	-	70,00,000	-	DC2903230298768	-
24.03.2023	CGST	-	70,00,000	-	DC2903230298768	-	24.03.2023	BEARING NO.
ARN- AD2903230275560	ARN	-	AD290323027539	WARN	-	AD2903230275057.		

THIS PETITION IS BEING HEARD AND RESERVED ON 16.07.2025 COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-



CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

**CAV ORDER**

In this petition, petitioner seeks for the following reliefs:-

a) *Issue a writ, order or direction in the nature of certiorari or any other appropriate writ in quashing the payment of Rs.10,00,00,000/- (Rupees Ten Crores totally) allegedly voluntarily made by the Petitioner towards the Goods and Service Tax in the following manner: (Annexure-A,A1,A2 and A3), Bearing No. ARN: AD2903230275560, ARN:AD290323027539W, ARN:AD2903230275057, ARN: AD2903230275718, DATE: 24.03.2023.*

Act	Amount	Debit entry NO.	Debit Entry Date
CGST	70,00,000	DC2903230298599	24.03.2023
CGST	70,00,000	DC2903230298599	24.03.2023
CGST	60,00,000	DC2903230298599	24.03.2023
CGST	1,20,00,000	DC2903230298668	24.03.2023
CGST	1,40,00,000	DC2903230298668	24.03.2023
CGST	1,40,00,000	DC2903230298668	24.03.2023
CGST	60,00,000	DC2903230298712	24.03.2023
CGST	70,00,000	DC2903230298712	24.03.2023
CGST	70,00,000	DC2903230298712	24.03.2023
CGST	60,00,000	DC2903230298768	24.03.2023
CGST	70,00,000	DC2903230298768	24.03.2023
CGST	70,00,000	DC2903230298768	24.03.2023

b) *Issue a writ, order or direction in the nature of mandamus or any other appropriate writ directing the Respondents herein to refund a sum of Rs.10,00,00,000/- obtained from the petitioner on 24.03.2023 on the pretext of*



*voluntary contribution towards various heads of Goods and Service Tax (Annexure-A, A1, A2 & A3)*

*c) Grant such other relief that this Hon'ble Court may deem fit in the facts and circumstances of the present matter."*

2. Briefly stated the facts giving rise to the present petition are as under:-

The petitioner is doing business of trading in electronic equipment and footwear etc., and obtained a GST registration from the respondents and was filing GST returns and making payment from 01.07.2017 onwards. On 23.03.2023, the 3<sup>rd</sup> respondent undertook a raid at the residence of the petitioner and seized certain movable articles including laptop etc. which was handed over back to the petitioner on 28.03.2023. Meanwhile, on 24.03.2023, respondents 3 and 4 conducted search, inspection and seizure operations at the business premises of the petitioner and are alleged to have obtained transfer of Rs.10 crores from the petitioner by coercion and under the threat of arrest vide Form BRC 03. In pursuance of the same, the petitioner approached this Court on 03.05.2023 till which date, the respondents had not issued any notice to the petitioner under Section 73 or 74 of the CGST Act.



During the pendency of the petition, some of the respondents have issued notice / intimation in GST DRC -01A followed by a show cause notice in GST DRC – 01 to the petitioner. It is the specific contention of the petitioner that he did not voluntarily make the aforesaid payment of Rs.10 crores to the respondents and that the same was received / obtained / collected by them under coercion and threat and as such, the said obtainment / collection of Rs.10 crores from the petitioner on 24.03.2023 was illegal and that the respondents are to be directed to refund the entire sum together with interest back to the petitioner, who is before this Court by way of the present petition.

3. As stated supra, when the present petition was preferred on 03.05.2023, the respondents had not issued any notice to the petitioner. It is also relevant to state that upon collecting / obtaining the aforesaid payment from the petitioner vide Form GST DRC – 03, the respondents did not issue any acknowledgment in the prescribed form GST DRC – 04 so as to appropriate the payment towards GST allegedly payable by the petitioner. In fact, the respondents have not issued the said acknowledgment in Form GST DRC – 04 even till today.



4. On 21.06.2023, the 4<sup>th</sup> respondent filed statement of objections disputing and denying the claim of the petitioner and *interalia* contending that the payment of Rs.10 crores by the petitioner was on purely voluntary basis and based on their self-ascertainment of tax and as such, the said payment was legal and proper and the petition was liable to be dismissed.

5. The petitioner filed rejoinder to the statement of objections on 13.07.2023 to the statement of objections filed by the 4<sup>th</sup> respondent, who thereafter filed additional statement of objections on 11.09.2024. The petitioner has filed additional rejoinder to the additional statement of objections filed by the 4<sup>th</sup> respondent.

6. Heard learned counsel for the petitioner and learned counsel for the respondents-Revenue and perused the material on record.

7. In addition to reiterating the various contentions urged in the memorandum of petition and referring to the material on record, learned counsel for the petitioner submits that the petitioner did not voluntarily make payment by way of self ascertainment but the same was obtained / received / collected by the respondents under



coercion and threat which is impermissible in law, which is contrary to Instruction No.1 / 2022-23 dated 25.05.2022 issued by the respondents and in the light of various judgments of the Apex Court, this Court and other High Courts, the respondents are to be directed to refund the entire sum of Rs.10 crores together with interest back to the petitioner. In support of his submissions, learned counsel for the petitioner placed reliance upon the following judgments:-

***(i) Mahavir Singh vs. Assistant Commissioner;  
(2024) 163 taxmann.com 543 (Del);***

***(ii) Lovelesh Singhal vs. Commr., Delhi GST;  
(2023) 157 taxmann.com 611 (Del);***

***(iii) Parsvnath Traders vs. Pr. Commr., CGST;  
(2023) 153 taxmann.com 361 (P&H);***

***(iv) Samyak Metals Pvt. Ltd. vs. UOI; (2023) 151  
taxmann.com 225 (P&H);***

***(v) Modern Insecticides Ltd. and Anr. vs. Commr.  
CGST and Anr.; (2023) 153 taxmann.com 548 (P&H);***

***(vi) Shree Ganesh Molasses Trading Co. vs.  
Supdt., Office of the Commr.; (2023) 148 taxmann.com  
36 (Guj.);***

***(vii) Union of India vs. Bundl Technologies Pvt.  
Ltd.; (2022) 136 taxmann.com 112 (Kar.);***



*(viii) Bundl Technologies Pvt. Ltd. vs. UOI; W.P.  
No. 4467/2021 dated 14.09.2021;*

*(ix) Vallabh Textiles vs. SIO & Ors.; (2022) 145  
taxmann.com 596 (Delhi);*

*(x) Bhumi Associates vs. UOI.; (2021) 124  
taxmann.com 429 (Guj.).*

8. Per contra, learned counsel for the respondents-Revenue submits that there is no merit in the petition and that the same is liable to be dismissed.

9. I have given my anxious consideration to the rival submissions and perused the material on record.

10. Before advertng to the facts of the instant case, it is significant to note that the practice of the respondents in receiving / collecting / obtaining forced / involuntary payments from the tax payer / assessee during the course of search / inspection / seizure / adjudication proceedings has been deprecated by the Apex Court and High Courts on several occasions. In ***Dabur India Ltd. v. State of U.P., - (1990) 4 SCC 113***, the Apex court held as under:-

*"31. Before we part with this case, two aspects have to be adverted to — one was regarding the allegation of the petitioner that in order to compel the petitioners to*



*pay the duties which the petitioners contended that they were not liable to pay, the licence was not being renewed for a period and the petitioners were constantly kept under threat of closing down their business in order to coerce them to make the payment. This is unfortunate. We would not like to hear from a litigant in this country that the government is coercing citizens of this country to make payment of duties which the litigant is contending not to be leviable. Government, of course, is entitled to enforce payment and for that purpose to take all legal steps but the government, Central or State, cannot be permitted to play dirty games with the citizens of this country to coerce them in making payments which the citizens were not legally obliged to make. If any money is due to the government, the government should take steps but not take extra-legal steps or manoeuvre. Therefore, we direct that the right of renewal of the petitioner of licence must be judged and attended to in accordance with law and the occasion not utilised to coerce the petitioners to a course of action not warranted by law and procedure. Secondly, in a situation of this nature, we are of the opinion that the government should consider feasibility of setting up of a machinery under a Council to be formed under Article 263 of the Constitution to adjudicate and adjust the dues of the respective governments. In these peculiar facts, it appears that the dispute is under two different Central legislations and under one the State authorities will realise and impose*



*the taxes on finding on certain bases and under the other the same transaction may be open to imposition by Central Government authorities on a particular view of the matter. In such a situation, how and wherein the refund should be made of any duty paid in respect of part of a transaction to one of the authorities, the State or the Centre, to be adjusted should be the subject matter of a settlement by the Council to be set up under Article 263 of the Constitution. This is a matter on which we draw the attention of the concerned authorities for examination because Section 3 of the 1955 Act and Section 3 of the 1944 Act may overlap similar transaction in certain cases."*

11. It is profitable to extract the provisions of Section 74(5) of the CGST Act, 2017 and Rule 142(2) of the CGST Rules, 2017, as under:-

***74. Determination of tax [pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.***

(1) xxxxxxxxx

(2) xxxxxxxxx

(3) xxxxxxxxx

(4) xxxxxxxxx

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of



*tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

Rule 142(2) of the CGST Rules, 2017:-

***Notice and order for demand of amounts payable under the Act.-***

**142.** (1) xxxxxxxx

(2) *Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 [of clause (i) of sub-section (8) of section 74A, as the case may be, or tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74 or clause(i) of sub-section (9) of section 74A], or where any person makes payment of tax, interest and penalty or any other amount due in accordance with the provisions of the Act [whether on his own ascertainment or, as communicated by the proper officer under sub-rule(1A),] [he shall inform the proper officer of such payment in FORM GST DRC-03 and an acknowledgment, in FORM GST DRC-04 shall be made available to the person through the common portal electronically].*

12. In its recent judgment in ***Radhika Agarwal v. Union of India*** -(2025) 6 SCC 545, the Apex Court held as under:-



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**"63.** *The Central Board of Indirect Taxes and Customs (GST-Investigation Wing), has accepted the said position vide Circular dated 17-8-2022, the relevant portion of which reads as under:*

*"F. No. GST/INV/Instructions/2021-22  
GST-Investigation Unit*

*17-8-2022*

*Instruction No. 02/2022-23 [GST — Investigation]*

*Subject: Guidelines for arrest and bail in relation to offence punishable under the CGST Act, 2017 — reg.*

*Hon'ble Supreme Court of India in its judgment dated 16-8-2021 in Siddharth v. State of U.P. [Siddharth v. State of U.P., (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423] , has observed as follows: (SCC p. 682, para 10)*

*'10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] . If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.'*

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**3. Conditions precedent to arrest:**

**3.1.** *Sub-section (1) of Section 132 of the CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the Commissioner to arrest a person where he has reason to believe that the alleged offender has committed any offence specified in*



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*clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of Section 132 which is punishable under clause (i) or clause (ii) of sub-section (1), or sub-section (2) of the Section 132 of the CGST Act, 2017. Therefore, before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible material.*

*3.2. Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:*

*3.2.1. Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?*

*3.2.2. Whether arrest is necessary to ensure proper investigation of the offence?*

*3.2.3. Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?*

*3.2.4. Whether person is mastermind or key operator effecting proxy/benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit, etc.?*

*3.2.5. As unless such person is arrested, his presence before investigating officer cannot be ensured.*

*3.3. Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilisation of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act, 2017, is evident and element of mens rea/guilty mind is palpable.*



3.4. Thus, the relevant factors before deciding to arrest a person, apart from fulfilment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.

3.5. Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of law. The prevalent practice of assessment could also be one of the determining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is cooperating in the investigation viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax, etc.

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**64.** The circular also refers to the procedure of arrest and that the Principal Commissioner/Commissioner has to record on the file, after considering the nature of the offence, the role of the person involved, the evidence available and that he has reason to believe that the person has committed an offence as mentioned in Section 132 of the CGST Act. The provisions of the Code, read with Section 69(3) of the CGST Act, relating to arrest and procedure thereof, must be adhered to. Compliance must also be made with the directions in *D.K. Basu [D.K. Basu v. State of W.B., (1997) 1 SCC 416 : 1997 SCC (Cri) 92]*.

**64.1.** The format of arrest, as prescribed by the Central Board of Indirect Taxes and Customs in Circular No. 128/47/2019-GST dated 23-12-2019, has also been referred to in this Instruction. Therefore, the arrest memo should indicate the relevant section(s) of the GST Act and other laws.



**64.2.** *In addition, the grounds of arrest must be explained to the arrested person and noted in the arrest memo. This instruction regarding the grounds of arrest came to be amended by the Central Board of Indirect Taxes and Customs (GST-Investigation Wing) vide Instruction No. 01/2025-GST dated 13-1-2025 (GST/INV/Instructions/21-22). The Circular dated 13-1-2025 now mandates that the grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. The acknowledgment of the same should be taken from the arrested person at the time of service of the arrest memo.*

**64.3.** *Instruction No. 02/2022-23 GST (Investigation) dated 17-8-2022 further lays down that a person nominated or authorised by the arrested person should be informed immediately, and this fact must be recorded in the arrest memo. The date and time of the arrest should also be mentioned in the arrest memo. Lastly, a copy of the arrest memo should be given to the person arrested under proper acknowledgment.*

**64.4.** *The circular also makes other directions concerning medical examination, the duty to take reasonable care of the health and safety of the arrested person, and the procedure of arresting a woman, etc. It also lays down the post-arrest formalities which have to be complied with. It further states that efforts should be made to file a prosecution complaint under Section 132 of the CGST Act at the earliest and preferably within 60*



*days of arrest, where no bail is granted. Even otherwise, the complaint should be filed within a definite time-frame. A report of arrests made must be maintained and submitted as provided in Para 6.1 of the Instruction.*

**64.5.** *The aforesaid directions in the circular/instruction should be read along with the specific directions outlined in the earlier judgments of this Court and the present judgment.*

**65.** *One of the assertions and allegations made on behalf of the petitioners is that the parties are compelled and coerced to admit and make payment of tax in view of the threat of arrest. This is in spite of the fact that there is no assessment or adjudication as to the alleged demand.*

**66.** *In this regard, we may refer to Circular F. No. GST/INV/Instructions/2022-2023 (Instruction No. 01/2022-23) dated 25-5-2022 issued by the Central Board of Indirect Taxes and Customs referring to the taxpayers depositing partial or full GST liability during the course of search, inspection or investigation. The relevant extracts of the circular read:*

*"F. No. GST/INV/Instructions/2022-23  
GST-Investigation Unit  
25-5-2022  
Instruction No. 01/2022-23 [GST — Investigation]  
Subject: Deposit of tax during the course of  
search, inspection or investigation — reg.*

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*3. It is further observed that recovery of taxes not paid or short-paid, can be made under the provisions of Section 79 of the CGST Act, 2017 only after*



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*following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of the CGST Act and Rules made therein. Therefore, there may not arise any situation where “recovery” of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.*

*4. Therefore, it is clarified that there may not be any circumstance necessitating “recovery” of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/short-payment of taxes before or at any stage of such proceedings. The tax officer should however inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.*

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**67.** *The circular notes that instances have been noticed where allegations of force and coercion were made by the officers for making recovery during the course of search, inspection and investigation. Some of the taxpayers had accordingly approached the High Courts. Reference is made to Section 79 of the CGST Act to state that recovery can be made only after following the due process of issuance of notice and subsequent confirmation of demand by issuance of an adjudicating order. On the last aspect, reference is made to Sections 73(5) and 74(5) of the CGST Act,*



*which help the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of the CGST Act. The statement in the circular that an assessee may voluntarily deposit tax as noticed was a cause of discussion before us. In this regard, our attention was drawn to Section 74(5) of the CGST Act, which states that a person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under Section 50 and a penalty equivalent to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer, and inform the proper officer in writing of such payment. Sub-section (5) to Section 74 relates to voluntary payment, and does not postulate payment under force, coercion or threat of arrest. The aforesaid circulars are binding and should be adhered to in letter and spirit. The authorities must exercise due care and caution as coercion and threat to arrest would amount to a violation of fundamental rights and the law of the land. It is desirable that the Central Board of Indirect Taxes and Customs promptly formulate clear guidelines to ensure that no taxpayer is threatened with the power of arrest for recovery of tax in the garb of self-payment. Way back in the year 1978, a three-Judge Bench of this Court in Nandini Satpathy v. P.L. Dani [Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424 : 1978 SCC (Cri) 236] had observed as under: (SCC p. 454, para 57)*



“57. ... We are disposed to read “compelled testimony” as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like — not legal penalty for violation.”

**68.** We called upon the Revenue to submit data in this regard. A chart has been filed before us and the same is reproduced below:

Total Number of GST Offence Cases					
Period: July 2017 to March 2024					
Period	Formation	No. of cases	Detection (In Rs Cr)	Recovery (In Rs Cr)	No. of arrest
2017-18 w.e.f. July 2017	CGST Zones	273	384	224	3
	DGGI	151	832	171	0
	Total	424	1216	394	3
2018-19	CGST Zones	5894	18,658	10,338	115
	DGGI	1474	19,288	8878	76
	Total	7368	37,946	19,216	191
2019-20	CGST Zones	8367	19,482	6956	123
	DGGI	2290	21,371	11,508	108
	Total	10,657	40,853	18,464	231
2020-21	CGST Zones	8756	18,247	3380	224
	DGGI	3840	31,137	8855	236
	Total	12,596	49,384	12,235	460
2021-22	CGST Zones	8770	24,757	5393	191
	DGGI	3804	48,481	19,764	151
	Total	12,574	73,238	25,157	342
2022-23	CGST Zones	10,500	31,053	12,509	93
	DGGI	5062	1,00,560	20,717	97
	Total	15,562	1,31,613	33,226	190
2023-24 (up to March 2024)	CGST Zones	14,492	35,377	7742	84
	DGGI	6090	1,94,955	24,016	139
	Total	20,582	2,30,332	31,758	223
Total Number of ITC Fraud Cases					
Period: July 2017 to March 2024					
Period	Formation	No. of cases	Detection (In Rs Cr)	Recovery (In Rs Cr)	No. of arrest
2017-18 w.e.f. July 2017	CGST Zones	5	13	12	2
	DGGI	0	0	0	0
	Total	5	13	12	2
2018-19	CGST Zones	1221	7993	676	97
	DGGI	399	3258	510	57
	Total	1620	11,251	1186	154
2019-20	CGST Zones	3231	12,003	1086	100
	DGGI	1027	7929	1331	95
	Total	4258	19,932	2417	195



2020-21	CGST Zones	5292	13,502	743	202
	DGGI	1976	17,731	1489	227
	Total	7268	31,233	2232	429
2021-22	CGST Zones	4636	14,895	825	178
	DGGI	1330	13,127	1202	114
	Total	5966	28,022	2027	292
2022-23	CGST Zones	5291	10,965	887	85
	DGGI	1940	13,175	1597	68
	Total	7231	24,140	2484	153
2023-24 (up to March 2024)	CGST Zones	6993	15,374	836	69
	DGGI	2197	21,000	2577	113
	Total	9190	36,374	3413	182

**"69.** Analysing the aforesaid data indicates that the number of people arrested is normally in hundreds or more. [ The data reflects that the number of arrests is inversely proportional to the percentage of amount recovered against the amount detected i.e. when payments are made, the power of arrest is not being exercised. Further, the amount classified as the "detection" amount is not the amount ascertained through assessment/adjudication, but an amount quantified by the Department/authority conducting search and seizure.] However, it is to be noted that the figures with regard to the tax demand and the tax collected would, in fact, indicate some force in the petitioners' submission that the assesseees are compelled to pay tax as a condition for not being arrested. Sub-section (5) to Section 74 of the CGST Act gives an option to the assessee and does not confer any right on the Tax Authorities to compel or extract tax by threatening arrest. This would be unacceptable and violative of the rule of law.



*70. We would observe that in case there is a breach of law, and the assesseees are put under threat, force or coercion, the assesseees would be entitled to move the courts and seek a refund of tax deposited by them. The Department would also take appropriate action against the officers in such cases."*

13. In ***Bhumi Associates case supra***, the Division Bench of the Gujarat High Court held as under:-

*"2. The officers of the concerned department who were asked to join the video conference did join, but at a very later stage. They were unable to witness the discussion that took place between the Court and Mr. Vyas. We propose to pass an interim order issuing the following directions.*

*"The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:*

*(1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.*

*(2) Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the*



*assessee should be asked/advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.*

*(3) Facility of filing complaint/grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.*

*(4) If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer."*

14. In pursuance of the directions issued by the Gujarat High Court, the respondents issued Instruction No.01/2022-23 (GST - Investigation) dated 25.05.2022 as hereunder:-

*" F.No.GST/INV/Instruction /2022-23  
Ministry of Finance  
Department of Revenue  
Central Board of Indirect Taxes and Customs  
GST Investigation Wing.*

*10<sup>TH</sup> Floor, Tower-2  
Jeevan Bharathi Building  
Connaught Circus, New Delhi – 100 001.  
**Dated: 25<sup>th</sup> May 2022.***

***Instruction No. 01/2022-23 [GST - Investigation]***

***Subject: Deposit of tax during the course of search, inspection or investigation - reg.***



*During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making 'recovery' during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon'ble High Courts in this regard.*

*2. The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73(5) and Section 74 (5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.*

*3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there*



*may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.*

*4. Therefore, it is clarified that there may not be any circumstance necessitating 'recovery of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.*

*5. Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.*

*Sd/-*

*(Vijay Mohan Jain)*  
*Commissioner (GST-Inv.), CBIC"*

15. The issue as to whether payments made by the tax payer / assessee during search / inspection / seizure / adjudication proceedings was involuntary / under coercion, threat, duress etc.,



or whether it was voluntary by way of self-ascertainment under Sections 73(5) and 74(5) of the CGST / KGST Act has come up for consideration before various Courts including the co-ordinate Bench of this Court in ***Bundl Technologies case supra***, wherein it was held as under:-

35. *Accordingly, it is clear that the procedure of self-ascertainment under sub-section (5) of Section 74 contains a scheme that is concluded after following the procedure under sub-sections (6), (7) and (8) of Section 74 of the CGST Act. In the present case, it must be noted that though there is payment of tax and even if it is accepted that payment of tax is also followed by requisite Challan DRC-03, the mere payment of tax cannot be construed to be a payment towards self-ascertainment as contemplated under Section 74 (5) of CGST Act.*

36. *The letter of the petitioner dated 30.11.2019 is clear and unambiguous, wherein it is asserted by the petitioner that the amount is made in furtherance of their good will conduct and bona fide and that it is made during the pendency of the inspection proceedings and the deposit is without prejudice and with reservation of rights, and contention to seek necessary refund at the appropriate time and should not be regarded as an admission of liability.*



37. Clearly, the payment of tax by itself even if construed to be voluntary will not by itself in any way lead to a conclusion that the same is paid in furtherance of self-ascertainment under Section 74(5) of CGST Act. The scheme of self-ascertainment as contained in sub-sections (5), (6), (7), (8) of Section 74 of CGST Act would not admit of making of payment and continuance of investigation. Upon payment of tax after collection of the same with penalty, if the same is accepted even before the issuance of notice under Section 74(1) during investigation, there ends the matter and there is nothing further to be proceeded with.

38. If it is that the petitioner has paid tax on self-ascertainment, the question of respondents contending that the investigation is pending would also indicate that the contention of self-ascertainment as made out by the respondent is clearly an afterthought. The respondents have not taken the stand that self-ascertained tax falls short and if that were to be so, it could have proceeded to issue notice as contemplated under Section 74(7) and could have even rejected the self-ascertainment in its entirety while asserting that it would issue notice under Section 74(1) of CGST Act, if facts so warrant. The stand of the respondents is ambiguous as self-ascertainment is put forward only as defence to the assertion of the petitioner that the payment of amount has been made involuntarily. Accordingly, the



*contention of payment being made by way of self-ascertainment is liable to be rejected.*

**\*\* \*\* \***

*45. Insofar as the aspect as to whether amount is paid under coercion as asserted by the petitioner, suffice it to say that the amounts are paid contemporaneous to the very dates when investigation was being made and during times when the petitioner's Officers or Directors were at the place of investigation, which fact is not in dispute. If it is that the petitioners were otherwise regularly filing their returns and paying taxes as evidenced from the table extracted supra at Para 18, the dispute if any as regards to the wrongful availment of input tax credit as regards certain set of transactions is a matter that was pending investigation. But, instead of allowing investigation to proceed and be concluded, it appears that the Department has acted in undue haste insofar as to ensure that taxes were paid during the process of investigation. While considering the time at which the amount was deposited in the Cash Ledger and the date of deposit, it would indicate that amounts were paid during times when there was no legal obligation to make payment."*

16. The appeal preferred by the respondents - Revenue was also dismissed by the Division Bench of this Court as hereunder:-



**15.** *In the obtaining factual matrix following issues arise for our consideration:—*

- (I) Whether the amount was voluntarily paid during the investigation by the company under section 74(5) of CGST Act?*
- (II) Whether the amount was recovered from the company during investigation under the coercion and threat of arrest?*
- (III) Whether the DGGI officers conducted in a High-handed and arbitrary manner during the course of investigation?*
- (IV) Whether writ petition filed by company suffers from delay or laches?*

**16.** *Now we may proceed to deal with issues ad-seriatim.*

*(I) WHETHER THE AMOUNT PAID DURING INVESTIGATION BY THE COMPANY WAS VOLUNTARILY PAID, UNDER SECTION 74(5) OF THE CGST ACT?*

**17.** *Section 74 of the Act deals with determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful mis.statement or suppression of facts. The relevant extract of section 74 reads as under:—*

*"74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or*



*erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-mis.statement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*

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*(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent, of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment."*

*Thus section 74(5) of the Act gives an option to a person to make payment of tax, along with interest and 15% of penalty on its own ascertainment of the tax ascertained by proper officer and inform him in writing about such payment.*

**18.** *It is pertinent to note that a division bench of Gujarat High Court in Bhumi Associate v. Union of India [2021] 124 taxmann.com 429/84 GST 634 by an interim order directed the Central Board Of Indirect Taxes And Customs was directed to enforce the following guidelines by issuing suitable circular/instructions:*

- (1) No recovery in any mode by cheque, cash e- payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under section 67 of the Central/Gujarat Goods and services Tax Act, 2017 under any circumstances.*



- (2) Even if the assessee comes forward to make voluntary payment by filing Form DRC 03, the assessee should be asked/advised to file such Form DRC 03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.*
- (3) Facility of filing complaint/grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.*
- (4) If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the afore stated directions, then strict disciplinary action should be initiated against the concerned officer.*

*The guidelines issued by the division bench are intended to regulate the powers of officers carrying out search and seizure as well as to safeguard the interest of the assessee.*

**19.** *The issue which arises for consideration is whether amount of Rs. 27,51,44,157/- has been paid by the company on its own ascertainment under section 74(5) of the Act. In the instant case, there is no material on record to indicate that the amount of Rs. 15 Crores and an amount of Rs. 12,51,44,157/- which were paid at about 4AM and 1PM on 30-11-2019 and 27-12-2019 respectively were paid on admission by the Company about its liability. There is no communication in writing from company to the proper officer about either self ascertainment or admission of liability by company to infer that such a payment was made under section 74(5) of the Act. The company intimated the Department vide Communication dated 30-11-2019 that it reserves its right to claim refund of the amount and the same should not be treated as admission of its liability. The relevant extract of communication dated 30-11-2019 reads as under:—*



*"BUNDL TECHNOLOGIES PRIVATE LIMITED*

*Registered Office, 4th Floor, Annex Building,  
Maruthi Chambers, Survey N0.17/9B*

*Bequr Hobli, Roopana Aqrahara, Bengaluru,  
Karnataka, India 560068  
CIN:U74110KA2013PTC096530*

*November 30, 2019*

*To,  
The Office of the Commissioner,  
Directorate General of Goods and  
Service Tax Intelligence, Hyderabad  
H.No. 1-11 -222/4, Lane Opp.HDFC Bank  
Nalli Silks, Begumpet, Hyderabad-500016.  
Sub: Submission related to investigation*

*Ref: Inspection dt:28/29 November 2019 by  
DGGSTI Officials at BTPL's offices situated at  
Bangalore, Gurugram and Hyderabad.*

*Dear Sir,*

*\*\**

*\*\**

*\*\**

*As an extension of our goodwill conduct  
and bonafide, we have deposited INR  
15,00,00,000/- (Rupees Fifteen Crores Only) with  
the Exchequer of Government during the pendency  
of inspection proceedings. The above deposit is  
without prejudice to and with full reservation of our  
rights and contentions to seek necessary refund at  
the appropriate time and therefore, should not be  
regarded as an admission of liability. The challan of  
payment of the aforesaid deposit is enclosed  
herewith for your ready reference as Annexure E.*

*We assure you of our full co-operation in this matter  
going forward."*



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*20. The company has also reiterated its stand in GST DRC-03 generated on 2-12-2019, the relevant portion of which is reproduced below:*

*"FORM GST DRC - 03*

*[See Rule 142(2) & 142(3)]*

*Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement*

*ARN:AD291219000080K*

*Date: 2-12-2019*

1.	GSTIN				29aafcb7707d1zq						
2.	Name				Bundl Technologies Private Limited						
3.	Cause of payment				Others						
4.	Section under which voluntary payment is made				Others						
5.	Details of show cause notice, if payment made within 30 days of its issue				Reference No.NA				Date of issue: NA		
6.	Financial year				2017-18						
7.	Details of payment made including interest and penalty if applicable (Amount in Rs.)										
Sr.No	Tax period	Act	Place of supply	Tax / cess	Interest	Penalty if applicable	Others	Total	Ledger utilized (Cash / Credit)	Debit entry No.	Date of debit entry
1.	Jul 2017 - Mar 2018	ITST	Karnataka	5,05 6,60 4.00	0.00	0.00	0.00	5,05 6,60 4.00	Cash	DC2 9121 9000 3301	02/12/2019

*8. Reasons, if any:*

*The above payment is made as an extension of our goodwill and bona fide. It is without prejudice to and with full reservation of our rights and contentions to seek necessary refund at the appropriate time and therefore should not be regarded as an admission of liability."*

*21. Thus it is evident that payments have not been made admitting the liability. On the other hand, the company reserved its right to seek refund and made it expressly clear that payment of the amount should not be treated as admission of its liability. Besides the aforesaid, there is no material on record to establish that guidelines issued by division bench of High Court of Gujarat were followed.*



*Thus for the aforementioned reasons, the first issue is answered in the negative and it is held that the amount was not paid voluntarily under section 74(5) of the CGST Act."*

17. This court in the case of ***Suretex Prophylactics (India) Private Limited vs. Union of India and Others;***  
***W.P.No.2444/2022 dated 27.02.2023***, held as under:-

*"5. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner has put forth the following contentions:-*

*(i) That the collection / recovery of INR 1.5 crores by the respondents was without jurisdiction or authority of law as required under Article 265 of the Constitution of India and on this ground alone, the said amount deserves to be refunded back to the petitioner together with interest;*

*(ii) No recovery can be made prior to investigation and / or during the course of investigation and recovery can be made only after / post investigation and passing of orders and in the instant case, since no adjudication was done as on the date of recovery, much less any order being passed, the amount collected by the respondents is without jurisdiction or any authority of law, the same deserves to be refunded.*

*(iii) My attention is invited to the Board Circulars dated 25.05.2022 and 19.01.2022 in order to contend that in the absence of adjudication or order for payment, the question of recovery of any money from the petitioner does not arise.*

*(iv) It is contended that the amounts collected / recovered from the petitioner without there being adjudication are in the nature of pre-deposit and the same not in the nature of tax / duty, the same deserves to be refunded back to the petitioner.*



*In support of his contentions, learned Senior counsel for the petitioner has placed reliance upon the following decisions:-*

**(i) LML Ltd., vs Collector of Central Excise, Kanpur - 2002 ( 142) ELT 273(SC);**

**(ii) Concepts Global Impex V. UOI - 2018 (11) TMI 688 – P&H HC;**

**(iii) Century Metal Recycling Pvt Ltd V. UOI - [2008 (10) TMI 96 – P&H H]**

**(iv) M/S Bhumi Associate V. Union of India - R/SCA 3196 of 2021, Gujarat High Court;**

**(v) M/S. Vallabh Textiles V. Senior Intelligence Officer & Ors. -[ W.P. (C) 9834/2022, Delhi High Court;**

**(vi) Makemytrip (India) Pvt. Ltd & Ibibo Group Pvt. Ltd Vs. Union of India & Ors., [(2016) 233 DLT 484 (DB)] ( Upheld by the Hon'ble High Court in Union of India Vs. Makemytrip (India) (P) Ltd., [(2019) 11 SCC 765];**

**(vii) Union of India and Ors. Vs. Bundl Technologies Private Limited and Ors [ Judgment dated 03.03.2022 in W.P. No 4467 of 2021];**

**(viii) Sivashankar Granites Pvt Ltd V Asst Commr of C. Ex., Warangal [1998 (98) E.L.T 32 AP];**

**(ix) M/s FCI OEN Connectors Ltd. V Union of India & Ors [ WP 5901 of 2021 T- RES, Karnataka High Court ];**

**(x) Commissioner of Cus., Bangalore V. Next Fashion Creators Pvt. Ltd [2012 (280) ELT 374 (Kar)];**

**(xi) Mount Shivalik Breweries V. Union of India [2003 (157) ELT 9 (Del)]**



***(xii) Commissioner of Customs, Bangalore V. Sami Labs Ltd., - [2012(278) ELT 601 (Kar)];***

***(xiii) Phthalo Colours and Chemicals India Ltd V. Commissioner of C.E, ST- 2019 – TIOL – 1176- CESTAT- AHM;***

***(xiv) Reliance Transport & Travels Ltd. V. Commissioner of Customs 2018- TIOL- 3620- CESTAT- DEL;***

***(xv) Commr. of Customs V. Reliance Transport & Travels Ltd., -[2020(372) ELT A105(SC)];***

***(xvi) Swadeshi Cotton Mills Co. Ltd V. Union of India - AIR 1981 SC 818, 831;***

***(xvii) Rajesh Kumar v. Dy. CIT- [2006] 157 Taxmann 168 (SC);***

***(xviii) EBIZ. Com Pvt LTd. V. Commissioner of Central Excise, Customs and Service Tax and Ors [2016 (9) TMI 1405 – Allahabad High Court];***

6. *Per contra, learned counsel for the respondents – revenue has made the following submissions:-*

*(i) The show cause notice has already been issued and investigation adjudication is under way and consequently, the question of directing refund at this stage would not arise and the petitioner be relegated to appear before the authority, as disputed question of facts arise for consideration for recovery of payment / non-payment of tax / duty;*

*(ii) There is no pleading with regard to the subject amount of INR 1.5 crores being a pre-deposit and consequently, even this contention cannot be accepted;*

*(iii) There is no application for refund in the prescribed form as required under Section 27 of the said Act of 1962 and on this ground also, the petition is liable to be dismissed;*



*(iv) Since the petitioner has already submitted his reply dated 22.02.2022 to the show cause notice dated 11.02.2022 issued by the respondents, the petitioner is not entitled to any relief at this stage.*

*7. By way of reply, learned Senior counsel for the petitioner submits that since the present petition was preferred on 29.01.2022 and that the right to claim refund got crystallized when the moment the subject amount of INR 1.5 crores was recovered and any subsequent show-cause notice or adjudication proceedings cannot be made the basis to deny refund sought for by the petitioner. My attention is invited to paragraph-10 of the statement of objections in order to point out that the admission made by the respondents that INR 1.5 crores was actually paid by the petitioner under protest during investigation. It is therefore contended that in the light of the submission of the petitioner that the petitioner has paid the said amount under protest, the petitioner would be entitled to refund.*

*It is contended that the proceedings pursuant to the show cause notice are independent proceedings, which are mutually exclusive, independent and distinct from the right of the petitioner to claim refund and consequently, the said proceedings cannot be relied upon by the respondents to deny the refund sought for by the petitioner.*

*8. I have given my anxious consideration to the rival submissions and perused the material on record.*

*9. Before advertng to the rival contentions, it is necessary to extract the two Circulars dated 25.05.2022 and 19.01.2022.*

*The Circular dated 25.05.2022 reads as under:-*

*F.No.GST/INV/Instruction /2022-23  
Ministry of Finance  
Department of Revenue  
Central Board of Indirect Taxes and Customs  
GST Investigation Wing.*



10<sup>TH</sup> Floor, Tower-2  
Jeevan Bharathi Building  
Connaught Circus, New Delhi –  
100 001.  
**Dated: 25<sup>th</sup> May 2022.**

***Instruction No. 01/2022-23 (GST-Investigation)***

**Subject:      *Deposit of tax during the course of search, inspection or investigation – reg.***

*During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntary depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making ‘ recovery’ during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon’ble High Courts in this regard.*

2.      *The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct applications of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73(5) and Section 74 (5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self- ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also*



*save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.*

3. *It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where “ recovery” of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.*

4. *Therefore, it is clarified that there may not be any circumstances necessitating ‘ recovery’ of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.*

5. *Pr. Chief Commissioners/ Chief Commissioners, CGST Zones, and Pr. Director general, DGCI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or*



*investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.*

*Sd/-*  
*(Vijay Mohan Jain)*  
*Commissioner (GST-Inv.), CBIC*

*The Circular dated 19.01.2022 reads as under:-*

*F.No.296/63/2020-CX9*  
*GOVERNMENT OF INDIA*  
*Ministry of Finance*  
*Department of Revenue*  
*Central Board of Indirect Taxes and Customs.*

*.....*

*Dated: 19.01.2022.*

*All Principal Chief Commissioners/Chief*  
*Commissioners of ST &CX*

*All Principal Chief Commissioners/Chief*  
*Commissioners of Customs*

*All Principal Director Generals/Director Generals,*  
*CBIC.*

***SUBJECT: Master circular on Recovery and Write-Off Arrears of Revenue***

*1. Board has issued Instruction/Circulars relating to recovery of arrears under Central Excise, Service Tax and Customs from time to time. Considering the changes that have taken place, especially after the introduction of GST in July, 2017, it has become imperative to update and revamp the procedure for recovery of arrears of Indirect taxes and Customs. Accordingly, in suppression of instructions issued earlier on the subjects which are annexed herewith as Annexure-A, this consolidated Circulars is being*



*issued providing guidelines for recovery and write – off of arrears of Indirect taxes and Customs.*

2. **THE CONCEPT OF ARREAR:**

(i) *Arrears are the overdue payment of the amount tax, interest, fine or penalty that is confirmed against a person who is liable to pay the same to the exchequer. It arises as result of Order-in-Original, Order of Appellate forum, like the Commissioner Appeals/ADC/JC/Appeals or the CESTA and the Courts of law.*

(ii) *The amount in the case under investigation, unconfirmed demands (i.e., show Cause Notice, including those in Call Book), Order-in-Original that has been set aside or remanded for de-novo adjudication by Appellate authority do not fall under the category of 'arrears'.*

10. *As can be seen from the Circular dated 25.05.2022, no recovery can be made unless the amount become payable in pursuance of the order passed by the Adjudicating Authority or otherwise become payable under the provisions of the GST Act as well as under the provisions of the Customs Act also. The Circular dated 19.01.2022 clearly states that arrears are the over due payment of the amount of tax, interest, fine or penalty that is confirmed against a person who is liable to pay the same to the exchequer and it arises as result of Order-in-Original. The said Circular also clarifies the amount in the case under investigation, unconfirmed demands, Show Cause Notice etc., and the Order-in-Original that has been set aside or remanded for de-novo adjudication by Appellate authority do not fall under the category of arrears.*

11. *In the instant case, it is an undisputed fact that prior to recovery of a sum of INR 1.5 crores from the petitioner, there is no adjudication or any order made/passed by the respondents, which entitled them to recover the money paid by the petitioner. As*



HC-KAR

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*rightly contended by the learned Senior counsel for the petitioner, the respondents have themselves admitted in their statement of objections that the petitioner did not voluntarily make the payment and that he made it under protest. Under these circumstances, in the light of the aforesaid material on record, which clearly establishes that the petitioner had made the payment under protest and that the payment was not preceded by any order of adjudication, the respondents did not have any jurisdiction or authority of law to recover INR 1.5 crores, which is clearly violative of Article 265 of the Constitution of India and consequently, the petitioner would be entitled to refund of the aforesaid amount collected by the respondents without jurisdiction or authority of law.*

12. In the case of **M/s.Vallabh Textiles vs. Senior Intelligence Officer & others**, the High Court of Delhi is held as under:-

*"33. Besides this, the following circumstances reveal, that the amounts deposited [the cumulative sum being Rs.1,80,10,000/-] did not have an element of voluntariness attached to it.*

*33.1 There is no dispute, that Rs.1,80,10,000/- was deposited in four (4) tranches in the prescribed format i.e., GST DRC-03, on the dates and at the time set forth hereinbelow:*

*-- Rs. 35,00,000/- vide Form GST DRC-03 dated 17.02.2022 at 01:28 AM*

*-- Rs. 1,00,00,000 vide Form GST DRC-03 dated 17.02.2022 at 02:15 AM*

*-- Rs. 20,25,000/- vide Form GST DRC-03 dated 17.02.2022 at 05:04 AM*

*-- Rs. 24,85,000/- vide Form GST DRC-03 dated 17.02.2022 at 07:03 AM*

*34. It is also not in dispute, that the search proceedings commenced on 16.02.2022 at about 03:30 PM and were concluded on the following day i.e., 17.02.2022 at 09:30 A.M.*

*35. The fact, that deposits were made [during the early hours of 17.02.2022] when the search had not*



*concluded, would show that the payments were not voluntary. The deposits made were not aligned with provisions of sub-section (5) of Section 73 or sub-section (5) of Section 74.*

*36. As noted above, if the payments/deposits were voluntary, then an acknowledgement of having received the payment should emanate from the proper officer, as mandated in the prescribed form i.e., GST DRC-04, as prescribed under sub-section (2) of Rule 142 of the 2017 Rules.*

*36.1 The official respondents/revenue, in our opinion, have not been able to discharge this burden.*

*37. The malaise 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 25.05.2022. For the sake of convenience, the said instruction is extracted hereafter:*

***“Date:25th May, 2022***

***Instruction No. 01/2022-23 [GST – Investigation]***

***Subject: Deposit of tax during the course of search, inspection or investigation- reg.***

***1. During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making 'recovery' during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon'ble High Courts in this regard.***

***2. The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST***



*portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73(5) and Section 74 (5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.*

*3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.*

*4. Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.*



**5. Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.**

**(Vijay Mohan Jain)  
Commissioner (GST-Inv.),  
CBIC”**

38. It appears that this Instruction was issued by the GST-Investigation Wing, CBIC, in the backdrop of an order dated 16.02.2021, passed by the Gujarat High Court in the matter of **Bhumi Associate v. Union of India** MANU/GJ/0174/2021, whereby the following wholesome directions were issued-

**“The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:**

**(1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.**

**(2) Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/ advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.**

**(3) Facility of filing [a] complaint/ grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.**

**(4) If complaint/ grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary**



***action should be initiated against the concerned officer."***

38.1 It is important to note, that while in line with the directions contained in **Bhumi Associate**, the aforementioned Instruction i.e., Instruction No. 01/2022-2023 dated 25.05.2022 inter alia, provides, as noticed above, that no recovery of tax should be made during search, inspection or investigation unless it is voluntary- it does not elaborate on various modes for collection adopted in such circumstances, for example via cheque, cash, e-payment or even via adjustment of input tax credit.

39. Furthermore, the Instruction falls short, inasmuch as it sidesteps direction number two (2) contained in Bhumi Associate, which states that even if the assessee comes forward to make voluntary payment in the prescribed form i.e., GST DRC-03, he/she should be advised to file the same the day after the search has ended and the concerned officers have left the premises of the assessee.

39.1 Clearly, the aforementioned direction, issued by the Gujarat High Court as far back as on 16.02.2021, is binding on the official respondents/revenue, which was not followed in the instant case.

39.2 The violation of the safeguards put in place by the Act, Rules and by the Court, to ensure that unnecessary harassment is not caused to the assessee, required adherence by the official respondents/revenue, as otherwise, the collection of such amounts towards tax, interest and penalty would give it a colour of coercion, which is not backed by the authority of law.

40. In this case, the argument of Mr Kumar, that the objection concerning the amounts deposited was raised only after the summon dated 13.04.2022 was issued, in our opinion, would not help the cause of the official respondents/revenue. The reason is, that if a procedure is prescribed under a statute or by law, that is, via dicta contained in a judgment, it has to be followed to the tee.

40.1 Failure to follow the prescribed procedure will, as in this case, have us conclude that the deposit of tax, interest and penalty was not voluntary.



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41. The reason that the officers of the official respondents/revenue have been asked, perhaps, to have the amounts deposited the day after the search is concluded, is, to also give space to the concerned person to seek legal advice, and only thereafter deposit tax, interest and penalty, wherever applicable, upon a proper self-ascertainment.

41.1 Undoubtedly, in this case, no such elbowroom was made available.

**Conclusion:**

42. Therefore, as alluded to hereinabove, we are persuaded to hold, that the aforementioned amounts which were deposited on behalf of the petitioner-concern, lacked an element of voluntariness.

43. Given this position, we are inclined to direct the official respondents/revenue to return Rs.1,80,10,000/- to the petitioner-concern, along with interest at the rate of 6% (simple) per annum.

44. The interest will run from 17.02.2022 till the date of payment.

45. The amount will be remitted to the petitioner-concern within ten [10] days of receipt of copy of the judgment.

46. Since we are in respectful agreement with the directions contained in **Bhumi Associate**, we direct the CBIC to align Instruction No. 01/2022-2023 dated 25.05.2022 with the directions issued by the Gujarat High Court in **Bhumi Associate**.

47. The writ petition is disposed of in the aforesaid terms."

13. In the case of **M/s.Concept Global Impex vs. Union of India & others**, the Punjab and Haryana High Court held as under:-

*The fact that a sum of ` 40,00,000/- had been taken from the petitioner without there being any show cause notice or the demand at that time, is not in dispute. The only issue sought to be raised by counsel for the respondents is that the amount was*



*deposited by the petitioner voluntarily. That issue has already been gone into by this Court in **Century Metal Recycling Pvt. Ltd** and **Century Knitters (India) Ltd.** cases (supra) wherein finding that certain amount was recovered from the exporter without any show cause notice or demand, it was ordered to be refunded.*

*In **Century Metal Recycling Pvt. Ltd (supra)** it was held that unless there is assessment and demand, the amount deposited by the petitioners cannot be appropriated. It was observed as under:-*

*“13. As far as the amount deposited by the petitioners is concerned, case of the petitioners is that the same was deposited under coercion. Case of the respondents was that the same was deposited voluntarily. Whatever be the position, unless there is assessment and demand, the amount deposited by the petitioners cannot be appropriated. No justification has been shown for retaining the amount deposited, except saying that since it was voluntarily deposited. In view of this admitted position, the petitioners are entitled to be returned the amount paid.”*

*In **Century Knitters (India) Ltd.** (supra) finding that certain amount was recovered by the revenue without any show cause notice or demand, while directing retaining of 20% of the amount, the balance amount of ` 8 crores was directed to be refunded. It was held that unless a demand is finalized and is existing which is liable to be discharged, the revenue cannot retain any amount unless there is a specific provision in the statute which authorizes such retention. Retention of any amount by the revenue in such a*



*situation would be violative of Article 265 of the Constitution.*

*The relevant observations are as under:-*

*“11. After hearing learned counsel for the parties and perusing the record, we find that as on date no crystallized liability has been shown to be existing against the petitioners. Further, only a show cause notice has been issued whereunder a liability to the extent of Rs.50 lacs could be fastened. Insofar, as the matters which are under investigation, it has not been shown that any show cause notice in respect thereof has been issued by the respondent-department so far.*

*12. It is trite law that unless a demand, which is finalized and is existing which is liable to be discharged, the revenue cannot retain any amount unless there exists specific provision in the statute for the retention of the amount.*

*13. On a specific query put to the learned counsel for the revenue relating to any provision in the statute on the basis of which the revenue could provisionally retain the amount, learned counsel for the revenue candidly admitted that there is no such provision to retain the amount except to refer to Section 42 of the Customs Act, 1962. Further, on a query as to whether any order requiring the petitioners to refund the duty drawback as canvassed by the revenue had been passed, learned counsel for the revenue was unable to show that there existed any such order or authorization from any competent authority. It was only urged that it was a disputed question of fact as to whether the amount was deposited voluntarily or under coercion. Be that as it may, whatever be the situation, the revenue cannot retain any amount to which it legally not entitled to as the same would be violative of Article 265 of the Constitution of India.”*



*Another fact which deserves to be noticed is that show cause notice was issued to the petitioner on 24.04.2017 and more than one year has already been elapsed but no order has been passed. Even if demand is confirmed against the petitioner, for hearing of appeal upto the CESTAT, only 10% of the amount is to be deposited, whereas the proceedings in the present case have not been concluded yet.*

*Keeping in view the enunciation of law as noticed above, after retaining the amount of ` 6,00,000/-, balance amount deposited by the petitioner be refunded to him within a period of four weeks from the date of receipt of copy of the order.*

*The writ petition is disposed of accordingly.*

**14. In the case of *Makemytrip (India) Pvt. Ltd., vs. Union of India & Others*, the Delhi High Court held as under;-**

*104. It is repeatedly urged by Mr. Satish Aggarwala that in the bail proceedings before the Magistrate, the Senior counsel representing Mr. Pallai volunteered that MMT would make payment of the arrears of service tax dues and, therefore, it cannot be said that there was any coercion or compulsion on MMT to make such payment. At the same time, he urged that such payment was not a pre-condition for the grant of bail and that in principle the DGCEI would oppose grant of bail in criminal proceedings only because an offer is made to pay the arrears of service tax dues in such proceedings.*

*105. In the first place, the Court is unable to accept that when an offer is made in the circumstances outlined before a criminal court for payment of alleged service tax arrears without even a show cause notice in this regard being issued, it is plain that the offer is made only to avoid the further*



*consequences of continued detention. Such a statement can hardly be said to be voluntary even though it may be made before a Court. Secondly, there appears a contradiction because the DGCEI did not decline to receive the offer of payment of alleged service tax arrears.*

*106. In a different context, while interpreting the provisions of the Delhi Value Added Tax Act, 2004 ('DVAT Act'), this Court in Capri Bathaid Pvt. Ltd. v. Commissioner of Trade & Taxes 2016 (155) DRJ 526 (DB) took exception to the officials of the Department of Trade and Taxes collecting arrears of sales tax from dealers at the time of survey and search. The Court pointed out that the said practice was illegal and there could be no collection without there being an assessment. The same principle would apply here as well. Without even an SCN being issued and without there being any determination of the amount of service tax arrears, the resort to the extreme coercive measure of arrest followed by detention was impermissible in law. Consequently, the amount that was paid by the Petitioners as a result of the search of their premises by the DGCEI, without an adjudication much less an SCN, is required to be returned to them forthwith. It is clarified that since the payment was collected by the DGCEI illegally, the refund in terms of this order will not affect the bail already granted to Mr. Pallai.*

*( IX) The Court is unable to accept that payment by the two Petitioners of alleged service tax arrears was voluntary. Consequently, the amount that was paid by the Petitioners as a result of the search of their premises by the DGCEI, without an adjudication much less an SCN, is required to be returned to them forthwith.*

**15. In the case of Union of India & others vs. M/s. Bundl Technologies Private Limited**, the Hon'ble Division Bench of this Court held as under:-



**"(I) WHETHER THE AMOUNT PAID DURING INVESTIGATION BY THE COMPANY WAS VOLUNTARILY PAID, UNDER SECTION 74(5) OF THE CGST ACT?"**

17. Section 74 of the Act deals with determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts. The relevant extract of section 74 reads as under:-

74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

XXX

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

Thus Section 74(5) of the Act gives an option to a person to make payment of tax, along with interest and 15% of penalty on its own ascertainment of the tax ascertained by proper officer and inform him in writing about such payment.

18. It is pertinent to note that a division bench of Gujarat High Court in **M/S BHUMI ASSOCIATE VS. UNION OF INDIA** by an interim order directed the Central Board Of Indirect Taxes And Customs was directed to enforce the following guidelines by issuing suitable circular / instructions:

(1) No recovery in any mode by cheque, cash e-payment or adjustment of input tax credit should be



*made at the time of search / inspection proceedings under Section 67 of the Central / Gujarat Goods and services Tax Act, 2017 under any circumstances.*

*(2) Even if the assessee comes forward to make voluntary payment by filing Form DRC 03, the assessee should be asked / advised to file such Form DRC 03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.*

*(3) Facility of filing complaint / grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.*

*(4) If complaint / grievance is filed by assessee and officer is found to have acted in defiance of the afore stated directions, then strict disciplinary action should be initiated against the concerned officer.*

*The guidelines issued by the division bench are intended to regulate the powers of officers carrying out search and seizure as well as to safeguard the interest of the assessee.*

*19. The issue which arises for consideration is whether amount of Rs.27,51,44,157/- has been paid by the company on its own ascertainment under section 74(5) of the Act. In the instant case, there is no material on record to indicate that the amount of Rs.15 Crores and an amount of Rs.12,51,44,157/- which were paid at about 4AM and 1PM on 30.11.2019 and 27.12.2019 respectively were paid on admission by the Company about its liability. There is no communication in writing from company to the proper officer about either self ascertainment or admission of liability by company to infer that such a payment was made under Section 74(5) of the Act. The company intimated the Department vide Communication dated 30.11.2019 that it reserves its right to claim refund of the amount and the same should not be treated as admission of its liability. The relevant extract of communication dated 30.11.2019 reads as under:-*

**BUNDL TECHNOLOGIES PRIVATE LIMITED**  
*Registered Office, 4th Floor, Annex Building, Maruthi*



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Chambers, Survey No.17/9B, egur Hobli, Roopana  
Agrahara, Bengaluru, Karnataka, India 560068  
CIN:U74110KA2013PTC096530

November 30, 2019

To,  
The Office of the Commissioner,  
Directorate General of Goods and  
Service Tax Intelligence, Hyderabad  
H.No.1-11-222/4, Lane Opp.HDFC Bank  
Nalli Silks, Begumpet, Hyderabad-500016.  
Sub: Submission related to investigation  
Ref: Inspection dt:28/29 November 2019 by DGGSTI  
Officials at BTPL's offices situated at  
Bangalore, Gurugram and Hyderabad.

Dear Sir,  
XXXXX

As an extension of our goodwill conduct and bonafide, we have deposited INR 15,00,00,000/- (Rupees Fifteen Crores Only) with the Exchequer of Government during the pendency of inspection proceedings. The above deposit is without prejudice to and with full reservation of our rights and contentions to seek necessary refund at the appropriate time and therefore, should not be regarded as an admission of liability. The challan of payment of the aforesaid deposit is enclosed herewith for your ready reference as Annexure E.

We assure you of our full co-operation in this matter going forward.

20. The company has also reiterated its stand in GST DRC-03 generated on 2.12.2019, the relevant portion of which is reproduced below:

FORM GST DRC - 03  
[See Rule 142(2) & 142(3)]  
Intimation of payment made voluntarily or made  
against the show cause notice (SCN) or statement  
ARN:AD291219000080K Date: 02.12.2019

1.	GSTIN	29aaafb7707d1zq
2.	Name	Bundl Technologies Private Limited
3.	Cause of payment	Others
4.	Section under which voluntary payment is made	Others
5.	Details of show cause notice, if payment made within 30 days of its issue	Reference No.NA Date of issue: NA



6.	Financial year				2017-18						
7.	Details of payment made including interest and penalty if applicable (Amount in Rs.)										
Sr.No	Tax period	Act	Place of supply	Tax / cess	Interest	Penalty if applicable	Others	Total	Ledger utilized (Cash / Credit)	Debit entry No.	Date of debit entry
1.	Jul 2017 - Mar 2018	ITST	Karnataka	5,05 6,60 4.00	0.00	0.00	0.00	5,05 6,60 4.00	Cash	DC2 9121 9000 3301	02/12/2019

**8. Reasons, if any:**

*The above payment is made as an extension of our goodwill and bonafide. It is without prejudice to and with full reservation of our rights and contentions to seek necessary refund at the appropriate time and therefore should not be regarded as an admission of liability.*

*21. Thus it is evident that payments have not been made admitting the liability. On the other hand, the company reserved its right to seek refund and made it expressly clear that payment of the amount should not be treated as admission of its liability. Besides the aforesaid, there is no material on record to establish that guidelines issued by division bench of High Court of Gujarat were followed.*

*Thus for the aforementioned reasons, the first issue is answered in the negative and it is held that the amount was not paid voluntarily under Section 74(5) of the CGST Act.*

**(II) WHETHER THE AMOUNT WAS RECOVERED FROM THE COMPANY DURING INVESTIGATION UNDER THE COERCION AND THREAT OF ARREST?**

*22. The officers of the Department have power of Inspection, search and seizure u/s 67(1) of CGST Act whereas Section 70 of the Act confers the power on the authority to summon person to give evidence as well as to adduce evidence. The relevant extract of Section 67(1) and Section 70 of the Act read as under:*

**67. Power of inspection, search and seizure.**

*(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that -*

*(a) a taxable person has suppressed any*



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*transaction relating to supply of goods or services or both or the stock of goods in hand , or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or*

*(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act.*

*He may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.*

*70. Power to summon person to give evidence and produce documents.*

*(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).*

*(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).*

**23. In VODAFONE ESSAR SOUTH LTD VS. UNION OF INDIA', 2009 (237) ELT 35 (BOM) it was held by Division Bench of Bombay High Court that without adjudication of liability, during the course of an investigation the assessee should not be forced to pay any amount. Similar view was taken by Delhi High Court in MAKEMYTRIP (INDIA) PVT. LTD. VS. UNION OF INDIA, 2016 (44) STR 481 DEL and it was held that amount collected during investigation proceeding without any adjudication is liable to be refunded. In CENTURY KNITTERS (INDIA) LTD. VS. UNION OF INDIA', 2013 (293) ELT 504 (P & H) it was held that any amount illegally collected cannot**



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*be retained without issuance of show cause notice and adjudication of liability and such amount is liable to be refunded. Similar view was taken in **CONCEPTS GLOBAL IMPEX VS. UNION OF INDIA, 2019 (365) ELT 32 (P & H).***

24. In the instant case, an investigation was initiated by DGGI officers and they entered the premises of the Company on 28.11.2019 at 10.30 a.m. in exercise of powers u/s 67(1) of CGST Act. On 30.11.2019 at about 4.00 a.m., a sum of Rs.15 Crores was deposited by the Company under the GST cash ledger. Thereafter summons were issued to officers of company under section 70 of the Act. The officers of the company made a further deposit of Rs.12,51,44,157/- at about 1.00 a.m. The aforesaid amounts were not deposited under section 74(5) of the Act. The amounts were deposited by the company at odd hours, without admitting its liability. The company has been regularly filing service tax returns. There is no iota of material on record to indicate that on the day that the company made payment of the amount, any amount was due to the department. Therefore, it can safely be inferred that payment of the amount was made involuntarily. There is also no material on record to hold that any threat of arrest was extended to officers of the company.

25. The question whether any threat was extended to officers of the company is a question of fact which can't be adjudicated in a summary proceeding under Article 226 of the Constitution of India. Liberty is reserved to the parties to agitate the issue of threat and coercion in an appropriate proceeding. Accordingly the second issue is answered by stating that amounts were paid by the company involuntarily."

16. As can be seen from the aforesaid judgment of this Court, the Hon'ble Division Bench also negated the very same contentions urged by the learned counsel for the respondents in the present petition that since the adjudication is pending, refund should not be ordered. This Court has categorically held that the contention of the Department that the amount under deposit must be made subject to the outcome of the pending investigation



cannot be accepted. It is therefore clear and evident that in the instant case also, the subject amount of INR 1.5 crores collected from the petitioner – company by the respondents is in violation of Articles 265 and 300-A of the Constitution of India and the same deserves to be refunded back to the petitioner.

17. In view of the aforesaid judgments and the judgment of the Hon'ble Division Bench in **Bundl Technologies case (supra)**, I am of the considered opinion that in the facts of the instant case, in the absence of any material to establish that there was any order or adjudication made by the respondents quantifying the amount of tax / duty payable by the petitioner as on the date of collecting / recovering the same during investigation, the respondents were clearly not entitled to recover the same, leading to the sole inference that the respondents are liable to refund the amount collected by them.

18. Learned Senior counsel for the petitioner is also correct in his submission that in the case of **Central Excise vs. KVR Construction - 2012(50) VST 469**, while construing Section 11B of the Central Excise Act, the Hon'ble Division Bench of this Court held as under:-

"33. We may also refer hereon a Division Bench Judgment of Karnataka High Court in *Commissioner of Central Excise v. KVR Construction*, 2012 (50) VST 469, where in construing Section 11b, Court said that it refer to claim for refund of duty of excise only and does not refers to any other amount collected without authority of law. That was a case of 'Service Tax' and Court said as under:

“ Though under Finance Act, 1994 such service tax was payable by virtue of notification, they were not liable to pay, as there was exemption to pay



*such tax because of the nature of the institution for which they have made construction and rendered services. In other words, if the respondent had not paid those amounts, the authority could not have demanded the petitioner to make such payment. In other words, authority lacked authority to levy and collect such service tax. In case, the department were to demand such payments, petitioner could have challenged it as unconstitutional and without authority of law. If we look at the conserve, we find mere payment of amount, would not authorize the department to regularise such payment. When once the department had no authority to demand service tax from the respondent because of its circular dated: 17.09.2004, the payment made by the respondent company would not partake the character of "Service tax" liable to be paid by them. Therefore, mere payment made by the respondent will neither validate the nature of payment nor the nature of transaction. In other words, mere payment of amount would not make it a "service tax" payable by them. When once there is lack of authority to demand "Service tax" from the respondent company, the department lacks authority to levy and collect such amount. Therefore, it would go beyond their purview to collect such amount. When once there is lack of authority to collect such service tax by the appellant, it would not give them the authority to retain the amount paid by the petitioner, which was initially not payable by them. Therefore, mere nomenclature will not be an embargo on the right of the petitioner to demand*



*refund of payment made by them under mistaken notion”*

19. The aforesaid judgment of the Hon'ble Division Bench has been followed by the Allahabad High Court in the case of **EBIZ.COM Pvt. Ltd. vs. Commissioner of Central Excise, Customs and Service Tax and Others – 2016(9) TMI 1405**, in order to come to the conclusion that any voluntary payment made by the petitioner is in the nature of pre-deposit which was liable to be refunded back to the petitioner. As stated supra, in the facts of the instant case also that the respondents as regards the recovery of aforesaid sum of INR 1.5 crores from the petitioner on 15.10.2019 is under protest as stated by the respondents themselves, there was no order of adjudication nor any other proceedings or order which initiated by the respondents, which entitled them to recover the said amount from the petitioner in the absence of any order of adjudication or any other material in this regard, the respondents did not have recover the said amount from the petitioner.

20. Insofar as the contentions urged by the respondents that the petitioner ought to have made an application under Section 27 of the Customs Act is concerned, this very contention was also answered against the revenue and in **EBIZ.COM's** case supra, it is held as under:-

11. Respondents have filed a counter-affidavit stating that petitioner paid “Service tax” voluntarily. It is also said that Section 11B of Act, 1944 would not be applicable since ‘Service Tax’ was deposited voluntarily and not under protest. It is also said that interest was also deposited by petitioner on his own since it was his legal obligation. Against Commissioner's order dated: 29.08.2012, department reviewed matter and filed appeal before Tribunal



*which is pending. Since petitioner never filed any application for refund in accordance with Section 11B (3) of Act, 1944, hence respondents cannot entertain any claim of refund, and, no refund claim of petitioner, in law is pending with respondents. No refund is due, automatically. Moreover, order of Commissioner (Appeals) dated: 29.08.2012, is not final since appeal is pending before Tribunal. Board's Circular dated: 08.12.2014 deals with amount deposited under Section 35F while in the present case it is Section 11B which will be applicable. Since petitioner never filed application as prescribed under Section 11B, hence no mandamus for refund is permissible.”*

18. The Co-ordinate Bench of this Court in the case of ***Kesar Colour Chem Industries vs. Senior Intelligence Officer and Another -W.P.No.17853/2021 dated 26.09.2024*** held as under:

*"19.The legal position regarding self ascertainment in terms of Section 74(5) of the CGST Act attributed to the petitioner is a matter that requires consideration.*

*20.In terms of the Scheme of the CGST Act, it must be noticed that the assessee has an opportunity even before the service of notice under Section 74(1) on the basis of "his own ascertainment of such tax or the tax as ascertained by the proper officer", make payment and inform the proper officer in writing regarding such payment as envisaged under Section 74(5).*

*21.Upon such payment, in terms of Section 74(5) of the CGST Act, the Proper Officer in terms of Section 74(6) is barred from*



*serving any notice under sub-section 74(1), though in terms of Section 74(7), whether Proper Officer is of the opinion that the amount paid under Section 74(5) falls short of the amount payable, he shall proceed to issue notice under Section 74(1).*

22. Section 74(7) of the CGST Act states that,

***“74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.—***

XXXX

*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

*(emphasis supplied)*

23. In terms of Section 74(8), once the person chargeable with tax pays tax, interest and penalty “... all proceedings in respect of the said notice shall be deemed to be concluded.”

24. It must be noted that the payments made by the petitioner of Rs.1.00 crore on 31.07.2021 and further amount of Rs.1.50 crores on 03.08.2021 and even if ‘DRC-03 declaration’ is taken note of, it cannot be stated that in the present case, there is self-ascertainment. For the purpose of self-ascertainment, it is clear that it amounts to a voluntary determination by the assessee himself as regards the liability of tax. In light of the stand taken in the Affidavit dated 10.08.2021 and the averments made in the writ petition filed on 16.09.2021, this element of voluntariness is absent and accordingly, the sine qua non of self-ascertainment is not fulfilled. Though the declaration in Form DRC-03 contains a declaration that the filing is voluntary, the facts as noticed above



*are sufficient to construe that such declaration was in fact not voluntary.*

*25.It is also to be noted that, if the Authority was of the view that petitioner had made payments as a part of the process of self-ascertainment under Section 74(5) of the CGST Act, the scheme of Section 74 contemplates that proceedings would terminate either on acceptance of self-ascertainment or if the Authorities were of the view that the self-ascertainment and the amount paid under Section 74(5) would fall short of the amount actually payable, the Authority could in terms of Section 74(7) proceed to issue a notice as provided for under Section 74(1) in respect of such amount which falls short of the amount actually payable. In the present case, the show cause notice issued dated 30.11.2022 would clearly indicate that the notice sought to be issued under Section 74(1) would indicate a fresh and complete adjudication and is not a notice as regards short fall of actual tax required to be paid as contemplated under Section 74(7) and accordingly, the State itself is estopped from contending that there was self-ascertainment.*

*26.A perusal of the summary of show cause notice and the show cause notice would indicate that the State itself has not accepted the self-ascertainment*

*27.In light of adjudication still to conclude and notice under Section 74(1) of the CGST Act is already issued, the question of going back to the stage of 74(5) does not arise, as in terms of Section 74(5), the self-ascertainment process is to be completed prior to the issuance of notice under Section 74(1), subject to issuance of notice under Section 74(7) as regards shortfall.*

*28 .If that were to be so, the recovery made pending adjudication in the present factual matrix being one which could be construed to be a recovery contrary to law and accordingly, contrary to Article 265 of the Constitution of India, the amount of Rs.2.50 crores is required to be refunded with interest as would be applicable in case of refund."*



19. The Division Bench of this Court in ***The Intelligence Officer and Another vs. M/s. Kesar Colour Chem Industries*** ***W.A.No.1649/2024 dated 28.01.2025*** held as under:

*"27. Having heard the learned counsel for the parties and perused the record, the learned Single Judge has allowed the writ petition on a finding that the deposit of the amount of Rs.1,00,00,000/- on 31.07.2021 and Rs.1,50,00,000/- on 03.08.2021 cannot be treated as a self-ascertainment as the element of voluntariness is absent. According to the learned Single Judge, the sine qua non of self-ascertainment is not fulfilled and as such, the payment is under coercion, the same is liable to be refunded back to the respondent.*

*28. The issue is whether such a conclusion of the learned Single Judge is justified?*

*29. The submission of Sri. Kamath was as there is no allegation that the deposit of the two amounts was under coercion and duress, the finding of the learned Single Judge is not sustainable. We are not in agreement with the said submission for the reason that, the statement of the proprietor of the respondent was recorded at 12:30 a.m. on 31.07.2021 after the Officers of the appellants visited the office of the respondent at 10:30 a.m. on 29.07.2021 and continued to be in the office till 23:30 p.m. on 30.07.2021 and thereafter, also served summons for appearance of the proprietor at Bengaluru on 02.08.2024. It is the case of the respondent that, he was forced to sign the statement at 12:30 a.m. when the Officers were still in office and similarly the statement of 03.08.2021 was recorded at Bengaluru, to which place the proprietor of the respondent was summoned. The facts demonstrate the interference that the recording of statement was under the threat, that he shall be arrested. It is also a fact that, one deposit was made in the afternoon of 31.07.2021 and the same*



*was after he was issued summons for appearance in Bengaluru on 02.08.2021 (appeared on 03.08.2021). So in that sense, there was likelihood that he may be arrested at Bengaluru if he does not deposit the money is writ large. Similarly, second payment was made on 03.08.2021 while the proprietor of the respondent was in Bengaluru. So it suggests, the statements were recorded and deposits were made under threat and coercion. The statements and the payments made cannot be separated nor it can be concluded that there is no allegation of threat and coercion for the purpose of payment/deposit of the amounts.*

*30. Section 74(1) of the CGST Act contemplates that the assessee has an opportunity under Section 74(5) to make his own ascertainment of tax and deposit the same. The appellants' case is that the respondent has deposited the amount upon self-ascertainment of tax, which stand is contested by the respondent by stating that the deposit was under threat and coercion, otherwise no amount is payable. So, the issue is whether any tax is payable at all? So, pending decision on the issue, can the amount remain deposited with the appellants? The answer has to be "NO", more so when it is concluded by the learned Single Judge that the same was not voluntary, with which we agree.*

*31. Having said that, insofar as the affidavit dated 10.08.2021 is concerned, the plea of Sri. Kamath is, such an affidavit was not given to the Authorities and it is for the first time filed along with the writ petition with an intention to resile out of the statements made to the appellants cannot be relied upon, is unsustainable. This we say so because, the only stand of the appellants in the appeal/affidavit is, the same is belated. If that be so it is noted, the affidavit is dated 10.08.2024 i.e., one week after the statement dated 03.08.2024 was made. One week is not a large period to be considered as fatal/belated. Learned counsel for the respondent is justified in relying upon the judgment of the Delhi High Court in the case of **Lovelesh Singhal** (supra), wherein the Delhi High Court has, in paragraphs No.21 to 24, 28 to 32, 35 and 36, held as under:*



*"21. The next question to be examined is whether the petitioner is entitled to reversal of the ITC that was debited from his ECL. As noted above, according to the petitioner, he was coerced to make the deposit of tax by debiting the ECL at 2 : 06 a.m. on October 8, 2022.*

*22. According to the respondents, the concerned officers of the Department had reached the principal place of business as well as other additional places of business at about 4 p.m. on October 7, 2022. The respondents state that the petitioner provided access to its additional place of business at 3411/249, 2nd floor, Hansapuri, Tri Nagar, Delhi but the relevant documents were not available at the said place. Accordingly, the officers had insisted that the access to the principal place of business (Property No. 66, Third Floor, Pocket-13, Sector-24, Rohini, Delhi), which was closed, be provided. The respondents have averred in their counter-affidavit that the "petitioner also requested not to break open or seal the premises as it would bring bad name to its business and the petitioner requested the Officers to wait at the additional place of business at Tri Nagar till the time keys got arranged by some family member at 12 : 30 a.m." According to the respondents, the survey and inspection at the principal place of business began after 12 : 30 a.m. and was concluded at 02 : 30 a.m. on October 8, 2022.*

*23. Admittedly, the petitioner had deposited a sum of Rs. 18,72,000 at 2 : 06 a.m. by debiting the*



*ECL. Concededly, the search and inspection proceedings were continuing at the material time.*

*24. In the given facts, we are inclined to accept the petitioner's claim that the deposit was made under duress and in compelling circumstances. The petitioner had been subjected to the search/inspection operations way beyond the normal business hours. Admittedly, the petitioner was called upon to provide copies of various books of account. The statement recorded on the said date-which is also relied upon by the respondents- clearly indicates that the petitioner had provided several documents to the concerned officers including the trading account for the period April 1, 2022 to October 7, 2022; cash book for the period October 1, 2022 to October 7, 2022; stock group summary as on October 7, 2022; copies of the last purchase and sale bills; profit and loss account for the period April 1, 2021 to March 31, 2022; and parties ledger.*

*xx xx*

*xx xx*

*xx xx*

*28. Given the scheme of permitting the taxpayers to voluntarily deposit tax prior to issuance of notices (either under section 73 or section 74 of the CGST Act) to avail of the benefit of absolving themselves from the liability to pay penalty either in entirety or in excess of 15 per cent. of tax payable as the case may be; in cases where the said tax is collected under coercion, the same is required to be returned.*

*29. It is not necessary to examine in detail any controversy whether such payments were made voluntarily. Clearly, where a taxpayer turns around*



*and states that the payments had not been made involuntarily and the circumstances prima facie indicate so, the taxpayer must be granted the benefit of withdrawing such payments. Obviously, in such cases, the taxpayer would forfeit immunity from levy of any penalty and the concerned authorities are not precluded from proceeding against the taxpayer in respect of any default and to the full extent as permissible under law.*

*30. It is relevant to note that the payment of tax on a self-ascertainment basis would necessarily require acceptance of the grounds on which such payments had been made. In the present case, it would be necessary for the petitioner to acknowledge the underlying liability on account of which the tax is paid. This is also required to be acknowledged by the respondents.*

*31. However, in the present case the petitioner has disputed that he is liable to pay any tax. There is no determination of the petitioner's liability to pay tax. Clearly, in such circumstances, the tax deposited by the petitioner cannot be considered as voluntary and within the scheme of section 73(5) of the CGST Act.*

*32. It is also important to note that the requisite procedure under rule 142 of the CGST Rules has also not been complied with. Admittedly, the respondents have not issued any acknowledgement accepting the payment made by the petitioner in form GST DRC-04 as required under the CGST Rules. In Vallabh Textiles v. Senior Intelligence Officer [(2023) 120 GSTR 213 (Delhi); 2022 SCC OnLine Del 4508.]*



*, a Co-ordinate Bench had held that failure to follow the prescribed procedure would also lead to the conclusion that the deposit made by the taxpayer was not voluntary.*

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*35. However, it appears that the said directions have not been implemented. In Vallabh Textiles v. Senior Intelligence Officer [(2023) 120 GSTR 213 (Delhi); 2022 SCC OnLine Del 4508.] , a Co-ordinate Bench of this Court had respectfully concurred with the aforesaid directions.*

*36. The Central Board of Indirect Taxes and Customs (CBIC) has also issued instructions emphasizing that the tax must be collected only after following the due process of law. The relevant extract of the said instructions dated May 25, 2022 are set out below:*

*“3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of section 79 of the CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where ‘recovery’ of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.*



4. Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings..."

31. The judgment was sought to be distinguished by Sri. Kamath by stating the statements which were recorded in the relied upon case were in the midnight and it is on that basis, the Court has come to the conclusion that the deposits made were under coercion and duress. The said submission is not appealing. The Court need to look into the facts in totality to come to a conclusion whether there was threat and coercion resulting in the statements recorded and also the deposits made. On a cumulative reading of the facts of this case, we are of the view that the learned Single Judge is right in coming to a conclusion in paragraphs No.24 and 28 of the impugned order which we have reproduced above that the payments were recovery and were contrary to law.

32. Insofar as the submission of Sri. Kamath as the writ petition involved disputed question of facts, the same could not have been gone into in proceedings under Article 226 of the Constitution of India is concerned, there is no dispute on the proposition advanced by Sri. Kamath, but the said proposition may not be applicable in the case in hand in view of the undisputed facts noted by the learned Single Judge that payments made were during investigation both at Mumbai and Bengaluru.

In the facts of the case we are of the view that, writ appeal is devoid of merits and the same is liable to be **dismissed**. It is ordered accordingly."

20. In **Vallabh Textiles's case supra** , the Division Bench of the Delhi High Court held as under:



*24. Having heard the learned counsel for the parties, it is quite evident, that the issue at hand can only be determined, having regard to the circumstances in which the aforementioned amount was deposited.*

*24.1 In this context, one would have to bear in mind, the safeguards, that the law has put in place.*

*25. The 2017 Act and the 2017 Rules made therein, do make provisions for enabling a person chargeable with tax to pay tax, along with interest, before being served with a notice for payment of tax, which either has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized for any reason.*

*25.1 Thus, if the person chargeable with tax takes recourse to such a route, the proper officer is restrained from serving any notice qua tax or penalty under the provisions of the 2017 Act or the 2017 Rules framed thereunder, unless the amount which is self-ascertained by the person chargeable with tax falls short of the amount payable as per law.*

*25.2 This leeway is also available, where the person chargeable with tax is served with a show cause notice and pays the tax, along with interest, under Section 50 of the 2017 Act within thirty [30] days of the issue of the show-cause notice. In such eventuality, a penalty is not leviable, and all proceedings in respect of such notice are deemed to be concluded.*

*26. This regime is set out in Section 73 of the 2017 Act.*

*27. Broadly, this regime also applies, where a notice has been issued under sub-section (1) of Section 73, and the proper officer serves a statement containing details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under sub-section (1) of Section 73.*



*27.1 The important aspect to be kept in mind, is that the regime given in Section 73 of the Act operates in cases which do not involve fraud or wilful-misstatement or suppression of facts to evade tax.*

*28. In cases which involve one or more of the aforementioned ingredients i.e., fraud, wilful misstatement or suppression of facts to evade tax, para materia provisions are contained in Section 74 of the 2017 Act, with small variations.*

*28.1 In these cases as well, latitude has been given to the person chargeable with tax, to pay monies towards tax, along with interest, based on self-ascertainment, before issuance of notice under sub-section (1) of Section 74 of the 2017 Act, with a caveat that fifteen per cent of such self-ascertained tax is required to be paid by way of penalty.*

*28.2 The penalty amount increases if amounts towards tax and interest are paid by the person chargeable with tax within thirty [30] days of the notice being issued by the proper officer under sub-section (1) of Section 74 of the 2017 Act. The person concerned is required to pay a penalty at the rate of twenty-five per cent within the aforesaid timeframe i.e., 30 days, upon which all proceedings in respect of such notice are deemed to be concluded.*

*29. These provisions have to be read alongside Rule 142, found in Chapter XVIII of the 2017 CGST Rules.*

*29.1 The said chapter bears the heading "Demands and Recovery".*

*30. Sub-rule (1) of Rule 142 of the 2017 Rules makes a provision for service of notice for raising a demand for recovery of tax; a provision which we are not concerned with in this matter, as it is not the case of the official respondents/revenue that a notice was served.*



*30.1 Besides this, the two sub-rules which are, perhaps, relevant are sub-rule (1A) and (2) of Rule 142, as they relate to the steps required to be taken before service of notice on the person chargeable with tax, interest and penalty under sub-section (1) of Section 73, or under sub-section (1) of Section 74 of the 2017 Act.*

*31. Under sub-rule (1A) of Rule 142 of the 2017 Rules, where a proper officer, before service of notice under section 73(1) or Section 74(1) of the 2017 Rules seeks to communicate details of tax, interest or penalty, he is required to do so in the prescribed form i.e., via Part A of Form GST DRC-01A.*

*31.1 Where, however, before service of notice or statement, the person chargeable with tax, based on self-ascertainment, seeks to make payment of tax and interest, in consonance with the leeway given under sub-section (5) of Section 73 [which relates to cases not involving fraud, wilful misstatement or suppression of facts to evade tax] or as the case may be, the payment of tax, interest and penalty under sub-section (5) of Section 74 [which relates to cases involving fraud, wilful misstatement or suppression of facts to evade tax], he is required to inform the proper officer of such payment made in the prescribed form i.e., GST DRC-03.*

*31.2 The proper officer thereafter, is required to issue an acknowledgement, accepting the payment made by the person, also in the prescribed form i.e., GST DRC-04.*

*31.3 This is also required to be done [i.e., the acknowledgement of acceptance of payment] where tax, interest and penalty are ascertained by the proper officer, under Rule 142(1A).*

*32. Clearly, the facts which have emerged, disclose that although payments were made in the prescribed form i.e., GST DRC-03, no document has been placed on record by the official respondents/revenue, demonstrating acknowledgement of having accepted the payment.*



**32.1** *Therefore, the stand taken before us by the official respondents/revenue, that this was a voluntary payment, based on self-ascertainment of tax, interest and penalty, is not established, as the regime incorporated under the provisions of Section 73/74 of the 2017 Act and the 2017 Rules, adverted to hereinabove, has not been adhered to.*

**33.** *Besides this, the following circumstances reveal, that the amounts deposited [the cumulative sum being Rs. 1,80,10,000/-] did not have an element of voluntariness attached to it.*

**33.1** *There is no dispute, that Rs. 1,80,10,000/- was deposited in four (4) tranches in the prescribed format i.e., GST DRC-03, on the dates and at the time set forth hereinbelow:*

— *Rs. 35,00,000/- vide Form GST DRC-03 dated 17-2-2022 at 01:28 AM*

— *Rs. 1,00,00,000 vide Form GST DRC-03 dated 17-2-2022 at 02:15 AM*

— *Rs. 20,25,000/- vide Form GST DRC-03 dated 17-2-2022 at 05:04 AM*

— *Rs. 24,85,000/- vide Form GST DRC-03 dated 17-2-2022 at 07:03 AM*

**34.** *It is also not in dispute, that the search proceedings commenced on 16-2-2022 at about 03:30 PM and were concluded on the following day i.e., 17-2-2022 at 09:30 A.M.*

**35.** *The fact, that deposits were made [during the early hours of 17-2-2022] when the search had not concluded, would show that the payments were not voluntary. The deposits made were not aligned with provisions of sub-section (5) of Section 73 or sub-section (5) of Section 74.*

**36.** *As noted above, if the payments/deposits were voluntary, then an acknowledgement of having received the payment should*



*emanate from the proper officer, as mandated in the prescribed form i.e., GST DRC-04, as prescribed under sub-section (2) of Rule 142 of the 2017 Rules.*

**36.1** *The official respondents/revenue, in our opinion, have not been able to discharge this burden.*

**37.** *The malaise 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 25-5-2022. For the sake of convenience, the said instruction is extracted hereafter:*

*"Date:25th May, 2022*

*Instruction No. 01/2022-23 [GST - Investigation]  
Subject: Deposit of tax during the course of search,  
inspection or investigation- reg.*

*1. During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making 'recovery' during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon'ble High Courts in this regard.*

*2. The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by*



*logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73(5) and Section 74 (5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or Section 74, as the case may be.*

*3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.*

*4. Therefore, it is clarified that there may not be any circumstance necessitating `recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers*



*regarding the provisions of voluntary tax payments through DRC-03.*

*5. Pr. Chief Commissioners/Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.*

*(Vijay Mohan Jain)*  
*Commissioner (GST-Inv.), CBIC"*

**38.** *It appears that this Instruction was issued by the GST-Investigation Wing, CBIC, in the backdrop of an order dated 16-2-2021, passed by the Gujarat High Court in the matter of Bhumi Associate v. Union of India [2021] 124 taxmann.com 429/46 GSTL 36/84 GST 634, whereby the following wholesome directions were issued-*

*"The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:*

*(1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.*

*(2) Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/ advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.*



*(3) Facility of filing [a] complaint/ grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.*

*(4) If complaint/ grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer."*

**38.1** *It is important to note, that while in line with the directions contained in Bhumi Associate, (supra) the aforementioned Instruction i.e., Instruction No. 01/2022-2023 dated 25-5-2022 inter alia, provides, as noticed above, that no recovery of tax should be made during search, inspection or investigation unless it is voluntary- it does not elaborate on various modes for collection adopted in such circumstances, for example via cheque, cash, e-payment or even via adjustment of input tax credit.*

**39.** *Furthermore, the Instruction falls short, inasmuch as it sidesteps direction number two (2) contained in Bhumi Associate (supra) which states that even if the assessee comes forward to make voluntary payment in the prescribed form i.e., GST DRC-03, he/she should be advised to file the same the day after the search has ended and the concerned officers have left the premises of the assessee.*

**39.1** *Clearly, the aforementioned direction, issued by the Gujarat High Court as far back as on 16-2-2021, is binding on the official respondents/revenue, which was not followed in the instant case.*

**39.2** *The violation of the safeguards put in place by the Act, Rules and by the Court, to ensure that unnecessary harassment is not caused to the assessee, required adherence by the official respondents/revenue, as otherwise, the collection of such amounts towards tax, interest and penalty would give it a colour of coercion, which is not backed by the authority of law.*



*40. In this case, the argument of Mr Kumar, that the objection concerning the amounts deposited was raised only after the summon dated 13-4-2022 was issued, in our opinion, would not help the cause of the official respondents/revenue. The reason is, that if a procedure is prescribed under a statute or by law, that is, via dicta contained in a judgment, it has to be followed to the tee.*

*40.1 Failure to follow the prescribed procedure will, as in this case, have us conclude that the deposit of tax, interest and penalty was not voluntary.*

*41. The reason that the officers of the official respondents/revenue have been asked, perhaps, to have the amounts deposited the day after the search is concluded, is, to also give space to the concerned person to seek legal advice, and only thereafter deposit tax, interest and penalty, wherever applicable, upon a proper self-ascertainment.*

*41.1 Undoubtedly, in this case, no such elbowroom was made available.*

*Conclusion:*

*42. Therefore, as alluded to hereinabove, we are persuaded to hold, that the aforementioned amounts which were deposited on behalf of the petitioner-concern, lacked an element of voluntariness.*

*43. Given this position, we are inclined to direct the official respondents/revenue to return Rs. 1,80,10,000/- to the petitioner-concern, along with interest at the rate of 6% (simple) per annum.*

*44. The interest will run from 17-2-2022 till the date of payment.*

*45. The amount will be remitted to the petitioner-concern within ten [10] days of receipt of copy of the judgment.*

*46. Since we are in respectful agreement with the directions contained in Bhumi Associate (supra) we direct the CBIC to align*



*Instruction No. 01/2022-2023 dated 25-5-2022 with the directions issued by the Gujarat High Court in Bhumi Associate (supra)."*

21. In ***Lovlesh Singhal's case supra***, the Division Bench of the Delhi High Court held as under:

*"21. The next question to be examined is whether the petitioner is entitled to reversal of the ITC that was debited from his ECL. As noted above, according to the petitioner, he was coerced to make the deposit of tax by debiting the ECL at 2:06 am on 8-10-2022.*

*22. According to the respondents, the concerned officers of the department had reached the principal place of business as well as other additional places of business at about 4 pm on 7-10-2022. The respondents state that the petitioner provided access to its additional place of business at 3411/249, 2nd floor, Hansapuri, Tri Nagar, Delhi but the relevant documents were not available at the said place. Accordingly, the officers had insisted that the access to the principal place of business (Property No. 66, Third Floor, Pocket-13, Sector-24, Rohini, Delhi), which was closed, be provided. The respondents have averred in their counter affidavit that the "Petitioner also requested not to break open or seal the premises as it would bring bad name to its business and the Petitioner requested the Officers to wait at the additional place of business at Tri Nagar till the time keys got arranged by some family member at 12:30 AM." According to the respondents, the survey and inspection at the principal place of business began after 12:30 am and was concluded at 02:30 am on 8-10-2022.*

*23. Admittedly, the petitioner had deposited a sum of Rs. 18,72,000/- at 2:06 am by debiting the ECL. Concededly, the search and inspection proceedings were continuing at the material time.*



*24. In the given facts, we are inclined to accept the petitioner's claim that the deposit was made under duress and in compelling circumstances. The petitioner had been subjected to the search/inspection operations way beyond the normal business hours. Admittedly, the petitioner was called upon to provide copies of various books of accounts. The statement recorded on the said date - which is also relied upon by the respondents - clearly indicates that the petitioner had provided several documents to the concerned officers including the Trading Account for the period 1-4-2022 to 7-10-2022; Cash Book for the period 1-10-2022 to 7-10-2022; Stock group summary as on 7-10-2022; copies of the last purchase and sale bills; profit and loss account for the period 1-4-2021 to 31-3-2022; and parties ledger.*

*25. It is important to note that the said statement does not indicate that there was any admission that the petitioner had wrongfully availed ITC.*

*26. Undisputedly, a taxpayer has an option to voluntarily pay tax on a self-ascertainment basis prior to issuance of a show cause notice. In terms of section 73(5) of the CGST Act, a person chargeable to tax may before service of a notice under section 73(1) of the CGST Act or prior to the statement under section 73(3) of the CGST Act, pay an amount of tax along with interest payable thereon under section 50 of the CGST Act and inform the proper officer of such payment in writing. In such eventuality, in terms of Section 73(6) of the CGST Act, no notice is required under section 73(1) of the CGST Act to be served by the proper officer in respect of the tax paid or any penalty payable under the provisions of the CGST Act. However, in terms of Section 73(7) of the CGST Act, if the tax paid falls short of the tax payable, the proper officer can issue the show cause notice in respect of the shortfall. Sub-sections (5), (6) and (7) of Section 73 of the CGST Act are set out below:*



*"73. Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.—*

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*(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

*(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the CGST Rules made thereunder.*

*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable"*

**27.** *It is clear from the above that the provisions of Sub-sections (5) and (6) of Section 73 of the CGST Act are for the benefit of a taxpayer who voluntarily pays tax on his own ascertainment prior to issuance of any show cause notice and thus, absolves himself of liability to pay penalty in respect of the tax paid. Sub-section (5) of Section 74 of the CGST Act is in somewhat similar terms except that the taxpayer is also required to pay penalty equivalent to 15% along with tax deposited on the basis of his own ascertainment. The provisions of Sub-sections 73(5) and 74(5) of the CGST Act are not provisions under which the Department can compel a taxpayer to deposit tax.*



*28. Given the scheme of permitting the taxpayers to voluntarily deposit tax prior to issuance of notices (either under section 73 or Section 74 of the CGST Act) to avail of the benefit of absolving themselves from the liability to pay penalty either in entirety or in excess of 15% of tax payable as the case may be; in cases where the said tax is collected under coercion, the same is required to be returned.*

*29. It is not necessary to examine in detail any controversy whether such payments were made voluntarily. Clearly, where a taxpayer turns around and states that the payments had not been made involuntarily and the circumstances prima facie indicate so, the taxpayer must be granted the benefit of withdrawing such payments. Obviously, in such cases, the taxpayer would forfeit immunity from levy of any penalty and the concerned authorities are not precluded from proceeding against the taxpayer in respect of any default and to the full extent as permissible under law.*

*30. It is relevant to note that the payment of tax on a self-ascertainment basis would necessarily require acceptance of the grounds on which such payments had been made. In the present case, it would be necessary for the petitioner to acknowledge the underlying liability on account of which the tax is paid. This is also required to be acknowledged by the respondents.*

*31. However, in the present case the petitioner has disputed that he is liable to pay any tax. There is no determination of the petitioner's liability to pay tax. Clearly, in such circumstances, the tax deposited by the petitioner cannot be considered as voluntary and within the scheme of section 73(5) of the CGST Act.*

*32. It is also important to note that the requisite procedure under Rule 142 of the CGST Rules has also not been complied with. Admittedly, the respondents have not issued any acknowledgement accepting the payment made by the petitioner in Form GST DRC-04 as required under the CGST Rules. In Vallabh Textiles (supra), a Coordinate Bench had held that failure to follow*



*the prescribed procedure would also lead to the conclusion that the deposit made by the taxpayer was not voluntary.*

**33.** *In Bhumi Associate (supra), the Gujarat High Court had issued a following directions to obviate any complaints of officers coercing taxpayers to deposit tax during search proceedings:*

*"The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:*

*(1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.*

*(2) Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.*

*(3) Facility of filing complaint/grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.*

*(4) If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer."*

**34.** *In terms of the aforesaid directions, the concerned officers were required to advise the taxpayer, who come forward to deposit tax during the course of search proceedings, that he should do so on the next day after the proceedings have been concluded.*



**35.** *However, it appears that the said directions have not been implemented. In Vallabh Textiles (supra), a Coordinate Bench of this Court had respectfully concurred with the aforesaid directions.*

**36.** *The Central Board of Indirect Taxes and Customs (CBIC) has also issued instructions emphasizing that the tax must be collected only after following the due process of law. The relevant extract of the said instructions dated 25-5-2022 are set out below:*

*"3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.*

*4. Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings.....".*

**37.** *It is clear from the above, that it is impermissible for the officers to pressurize the taxpayers to pay tax without following the requisite procedure, notwithstanding that it may be apparent that such tax is due and payable.*

**38.** *The reliance placed on behalf of the respondents on the decision of the Kerala High Court in Suresh Kumar P.P. (supra) is*



*of little assistance to the respondents as in that case, the Court had concluded that the cheque issued by the taxpayer was voluntary and was sanctioned by the statute and the CGST Rules made thereunder.*

**39.** *It was contended on behalf of the respondents that since the petitioner had not retracted his statement, it was not open for the petitioner to claim that the payments made were not voluntary. There is no factual foundation for the said contention. A plain reading of the statement of the petitioner as recorded on 7-10-2022 does not indicate that he had acknowledged the liability to pay any tax or that he had availed ITC contrary to law. On the contrary, the petitioner had disputed that there was any mismatch in the returns filed for the period 2017-18 and 2022-23. The respondents rely on paragraph 14 of the said statement, which reads as under:*

*"14. That the visiting team has informed that the following inward supply dealers have been cancelled suomoto from the date of registration:*

*1. M/s. Samridhi exports (07AFGPY9258P2Z7) ITC  
Rs. 18,72,000/-"*

**40.** *The above statement cannot be read as acknowledgment of any liability to pay ITC. It merely records that the visiting team had informed the petitioner that the registration of the supplier, M/s Samridhi Exports had been cancelled. The same cannot be read as the petitioner acknowledging that he was liable to reverse the ITC in respect of purchases made from the said dealer.*

**41.** *In view of the above, the reliance placed by the respondents on the decision of this Court in M/s RCI Industries and Technologies and Technologies Ltd. Through its Director Rajeev Gupta (supra) is also misplaced. In that case, the assessee's claim that he was coerced to make the statement was doubted on the ground that the petitioner had not retracted the same. The said decision has no relevance in the facts of this case.*



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*42. The decision of the Gujarat High Court in S.S. Industries (supra) is also of little assistance to the respondents. In that case, there were serious allegations against the petitioner, which were set out in the counter affidavit. The Court had set out the said allegations and in paragraph 71 of the said decision, noted that none of the said averments made in the counter affidavit, were refuted. As stated hereinbefore, in the present case, there is no acknowledgement by the petitioner that he had wrongfully availed of the ITC.*

*43. In view of the above, we direct the respondents to reverse the ITC of Rs. 18,72,000/- deposited by the petitioner on 8-10-2022 and forthwith credit the same in his ECL."*

22. In ***Mahaveer Singh's case supra***, the Division Bench of the Delhi High Court held as under:

*"5. As per the Petitioner, pre-typed statement were printed by the officers of the Respondents from the Petitioner's computer and Petitioner was coerced to sign the same. Thereafter Petitioner was made to deposit an amount of Rs. 35,00,000/- (Rupees Thirty Five Lakhs only) by way of reversal of Input Tax Credit before the search team left the premises of the Petitioner. The said amount was paid vide FORM GST DRC-03.*

*6. Learned counsel for the petitioner relies upon the decision dated 20.12.2022 in W.P.(C) 9834/2022/Vallabh Textiles v. Senior Intelligence Officer [2022] 145 taxmann.com 596/95 GST 751/70 GSTL 3 (Delhi) titled wherein it was held that if the petitioner is coerced to make a deposit in an involuntary manner then the Petitioner is entitled to refund the said amount along with interest.*

*7. Learned counsel for petitioner submits that the deposit being made during course of search in the presence of the official, could not be termed a voluntarily deposit. He further submits that the*



*petitioner was not given an opportunity to explain about the transactions and the stock position in question.*

*8. Per contra learned counsel for respondents submits that there was no coercion, and the amount was voluntarily deposited by the petitioner. He further submits that recovery proceedings under Section 73 of the Central Goods and Services Tax Act 2017 have been initiated by issuance of a Show Cause Notice and proceedings are underway.*

*9. It would be apposite herein to quote the decision in the case of Vallabh Textiles v. Senior Intelligence Officer (supra). A Co-ordinate bench of this court held as under:*

*"51. The 2017 Act and the 2017 Rules made therein, do make provisions for enabling a person chargeable with tax to pay tax, along with interest, before being served with a notice for payment of tax, which either has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized for any reason.*

*52. Thus, if the person chargeable with tax takes recourse to such a route, the proper officer is restrained from serving any notice qua tax or penalty under the provisions of the 2017 Act or the 2017 Rules framed thereunder, unless the amount which is selfascertained by the person chargeable with tax falls short of the amount payable as per law.*

*53. This leeway is also available, where the person chargeable with tax is served with a show cause notice and pays the tax, along with interest, under Section 50 of the 2017 Act within thirty [30] days of the issue of the show-cause notice. In such eventuality, a penalty is not leviable, and all proceedings in respect of such notice are deemed to be concluded.*

*54. This regime is set out in Section 73 of the 2017 Act.*



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55. Broadly, this regime also applies, where a notice has been issued under sub-section (1) of Section 73, and the proper officer serves a statement containing details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under subsection (1) of Section 73.

56. The important aspect to be kept in mind, is that the regime given in Section 73 of the Act operates in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax.

57. In cases which involve one or more of the aforementioned ingredients i.e., fraud, wilful misstatement or suppression of facts to evade tax, parimateria provisions are contained in Section 74 of the 2017 Act, with small variations.

58. In these cases as well, latitude has been given to the person chargeable with tax, to pay monies towards tax, along with interest, based on self-ascertainment, before issuance of notice under subsection (1) of Section 74 of the 2017 Act, with a caveat that fifteen per cent of such self-ascertained tax is required to be paid by way of penalty.

59. The penalty amount increases if amounts towards tax and interest are paid by the person chargeable with tax within thirty [30] days of the notice being issued by the proper officer under sub-section (1) of Section 74 of the 2017 Act. The person concerned is required to pay a penalty at the rate of twenty-five per cent within the aforesaid timeframe i.e., 30 days, upon which all proceedings in respect of such notice are deemed to be concluded.

60. These provisions have to be read alongside Rule 142, found in Chapter XVIII of the 2017 CGST Rules.

61. The said chapter bears the heading "Demands and Recovery".



62. Sub-rule (1) of Rule 142 of the 2017 Rules makes a provision for service of notice for raising a demand for recovery of tax; a provision which we are not concerned with in this matter, as it is not the case of the official respondents/revenue that a notice was served.

63. Besides this, the two sub-rules which are, perhaps, relevant are sub-rule (1A) and (2) of Rule 142, as they relate to the steps required to be taken before service of notice on the person chargeable with tax, interest and penalty under sub-section (1) of Section 73, or under subsection (1) of Section 74 of the 2017 Act.

64. Under sub-rule (1A) of Rule 142 of the 2017 Rules, where a proper officer, before service of notice under Section 73(1) or Section 74(1) of the 2017 Rules seeks to communicate details of tax, interest or penalty, he is required to do so in the prescribed form i.e., via Part A of Form GST DRC-01A.

65. Where, however, before service of notice or statement, the person chargeable with tax, based on self-ascertainment, seeks to make payment of tax and interest, in consonance with the leeway given under sub-section (5) of Section 73 [which relates to cases not involving fraud, wilful misstatement or suppression of facts to evade tax] or as the case may be, the payment of tax, interest and penalty under sub-section (5) of Section 74 [which relates to cases involving fraud, wilful misstatement or suppression of facts to evade tax], he is required to inform the proper officer of such payment made in the prescribed form i.e., GST DRC-03.

66. The proper officer thereafter, is required to issue an acknowledgement, accepting the payment made by the person, also in the prescribed form i.e., GST DRC-04.

67. This is also required to be done [i.e., the acknowledgement of acceptance of payment] where



*tax, interest and penalty are ascertained by the proper officer, under Rule 142(1A).*

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*76. The malaise 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 25.05.2022. For the sake of convenience, the said instruction is extracted hereafter:*

*"Date : 25 May, 2022*

*Instruction No. 01/2022-2023 [GST - Investigation]*

*Subject : Deposit of tax during the course of search, inspection or investigation-reg.*

1.		<i>During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making 'recovery' during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon'ble High Courts in this regard.</i>
2.		<i>The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of</i>



		<i>tax before issuance of show cause notice is permissible in terms of provisions of Section 73 (5) and Section 74(5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.</i>
3.		<i>It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery " of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.</i>
4.		<i>Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on nonpayment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments</i>



		<i>through DRC-03.</i>
5.		<i>Pr. Chief Commissioners/Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.</i>

*(Vijay Mohan Jain)*  
*Commissioner (GST-Inv.), CBIC"*

*77. It appears that this Instruction was issued by the GST Investigation Wing, CBIC, in the backdrop of an order dated 16.02.2021, passed by the Gujarat High Court in the matter of Bhumi Associate v. Union of India, SCA No. 3196 of 2021, order dated 16-2- 2021 (Guj), whereby the following wholesome directions were issued-*

*"The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:*

<i>(1)</i>		<i>No recovery in any mode by cheque, cash, epayment or adjustment of input tax credit should be made at the time of search/inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.</i>
<i>(2)</i>		<i>Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.</i>
<i>(3)</i>		<i>Facility of filing [a] complaint/grievance after the end of search proceedings should be</i>



		<i>made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.</i>
(4)		<i>If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer."</i>

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*80. Clearly, the aforementioned direction, issued by the Gujarat High Court as far back as on 16.02.2021, is binding on the official respondents/revenue, which was not followed in the instant case.*

*81. The violation of the safeguards put in place by the Act, Rules and by the Court, to ensure that unnecessary harassment is not caused to the assessee, required adherence by the official respondents/revenue, as otherwise, the collection of such amounts towards tax, interest and penalty would give it a colour of coercion, which is not backed by the authority of law.*

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*83. Failure to follow the prescribed procedure will, as in this case, have us conclude that the deposit of tax, interest and penalty was not voluntary."*

*10. In the instant case, the deposit made by the Petitioner before the search ended and the officers left, shows that the deposit was not voluntary and contrary to the CBIC Instruction No. 01/2022-2023 dated 25.05.2022.*

*11. We are unable to the accept the contention of learned counsel for the respondent that the deposit was voluntary for the reason that there is no material placed on record by respondent to show as to why petitioner would voluntarily deposit the said amount when there was no claim made against the petitioner as on the date of deposit.*



*12. Therefore, the amounts that were deposited on behalf of petitioner lacked voluntariness. Accordingly, said amount are liable to be returned with interest.*

*13. In view of the above, Respondents are directed to, within four weeks, refund the amount of Rs.35,00,000/- to the Petitioner alongwith statutory interest @ 6% p.a. from date of deposit till repayment.*

*14. It is clarified that the refund would be without prejudice to the proceedings initiated by the respondents under Section 73 of the Act and the defense of the petitioner thereto."*

23. In ***Parsvnath Traders's case supra***, the Division Bench of the Punjab and Haryana High Court held as under:

*"11. The grievance of the petitioner is that the respondents without issuing any show cause notice as required under section 74(1) of the Act, straightaway recovered an amount of Rs.50.70 lacs from it thereby, without following the adopted procedure and this action amounted to recovery without authority of law. Whereas, according to the respondents, the deposit had been made voluntarily vide GST DRC-03 on two different dates during the course of investigation which amounted to 'self-ascertainment' in terms of section 74 and it was hence urged that the petitioner could not make any prayer for issuing a mandamus seeking refund of that amount. The legal issue raised before us is as to whether the petitioner is entitled to refund of the amount paid during the investigation. For this purpose, in our opinion it would be relevant to understand the scheme of assessment as set out under section 74 of the Act. A bare reading of provisions of section 74(1) of the Act makes it clear that it provides for determination of tax not paid, shortly paid or erroneously refunded or wrongful availment of ITC by reason of fraud, willful misstatement or suppression of facts etc. The sub-section 5 of section 74 on the other hand, provides an*



*opportunity to an assessee for amicable settlement of an assessment before the authorities prior to receipt of show cause notice and the assessee may pay at that stage the tax along with interest and penalty on the basis of 'self ascertainment' or on ascertainment by the proper officer. It is, however, well settled proposition of law that section 74(5) of the Act cannot be considered as a statutory sanction for advance tax payment, pending final determination in the assessment because that would certainly be contrary to scheme of assessment as set out under section 74. Sub-section 6 of this section further provides that no show cause notice shall be served upon the assessee on deposit by way of such ascertainment. These provisions clearly provide an opportunity for the assessee and/or to the revenue to ascertain the proper amount of tax, interest and penalty and even in cases where there might have been a shadow of wrong declaration, wrong availment or utilisation of ITC, or short payment of tax, there can be a closure of the proceedings at that stage itself on the basis of either a 'self ascertainment' by an assessee and acceptance of the same by the revenue or vice-a-versa.*

**12.** *Further, it is also the well established that no collection of tax from an assessee can be insisted upon prior to final determination of liability being made. According to the revenue, with the inception of section 74(5), the collection of amounts in advance has attained statutory sanction, provided the same are voluntary in form GST DRC-03. Now it is to be considered as to whether the deposit of sum Rs.50.70 lacs which was made by the petitioner during the course of investigation, is to be considered as voluntary deposit of amount which had allegedly been claimed by it by way of ITC on the basis of purchases made by it from M/S Royal which are alleged to be false purchases? According to the petitioner, since there was no assessment and even demand by way of issuance of show cause notice, the amount deposited by it could not be appropriated especially when it was not voluntary deposit. Interestingly, this petition is pending since the year 2021, admittedly no show cause notice has been issued against the*



*petitioner in accordance with Section 74(1) of the Act till date. As asserted by the revenue, the payments of Rs.50.70 lacs (Rs.20 lacs+Rs.30.70 lacs) as made by the petitioner on two different dates constituted 'self ascertainment' and triggered the provisions of section 74(5) of the Act and were voluntary deposits. However, we are unable to accept this contention for the reasons that if that would have been actually the position, then the respondents must have contained material on record to show that the petitioner had in fact, accepted the ascertainment made by it and the revenue had applied its mind and arrived at the conclusion that 'self ascertainment' by the assessee was adequate/inadequate. The petitioner on the contrary is shown to have consistently contested its liability to make payment of the tax. The deposit of the aforementioned amount on the day of search and shortly thereof, when the proprietor of the petitioner was naturally under the stress of search/investigation does not amount to lead to 'self assessment' or 'self ascertainment'. The 'self ascertainment' which is contemplated under section 74(5) of the Act, 2017 is in the nature of 'self assessment' and amounts to a determination by it which is unconditional and not as in the present case when shortly after depositing the amount Rs.50.70 lacs, the petitioner approached the revenue for refund of the same. Such recovery is not permissible. In this regard, reliance can be placed upon in M/s Bhumi Associate's case (supra) wherein, it was observed that at the time of search/inspection proceedings under the provisions of Central/Gujarat Goods and Services Tax Act, 2017, no recovery in any mode by cheque, cash, e-payments or adjustment of ITC should be made.*

**13.** *Further, no crystalised liability was shown to be existing against the petitioner and no show cause notice had been issued to it either at that time or even till now and the amount of Rs.50.70 lacs was recovered from it during investigation and has been retained by it. In similar circumstances in Century Knitters (India) Ltd.'s case (supra), a Bench of this Court had observed that unless and until demand was finalised and existing, no crystalised liability was*



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*existing against the petitioner and the revenue could not retain any amount in absence of specific statutory provisions and the refund of the amount so recovered was ordered. Similarly, in Concepts Global Impex's case (supra), a Co-ordinate Bench of this Court was dealing with a case wherein, at the time of import of goods, the duty leviable thereon, was paid but the Directorate of Revenue Intelligence has pressurized the petitioner to pay another sum of Rs.42 lacs while detaining the goods in transit. The petitioner submitted that the same had been paid without there being any show cause notice or order confirming the demand and the same was in violation of article 265 of the Constitution of India as it was paid under the pressure of DRI officials. It was held that since there was no show cause notice or demand, the revenue could not retain the deposited amount and the refund thereof, was allowed.*

**14.** *Reference can also be made to Century Metal Recycling (P.) Ltd.'s case (supra) wherein, a Co-ordinate Bench of this Court had observed that unless there was an assessment and demand, the amount deposited by the petitioners could not be appropriated. It was observed as under:-*

*"13. As far as the amount deposited by the petitioners is concerned, case of the petitioners is that the same was deposited under coercion. Case of the respondents was that the same was deposited voluntarily. Whatever be the position, unless there is assessment and demand, the amount deposited by the petitioners cannot be appropriated. No justification has been shown for retaining the amount deposited, except saying that it was voluntarily deposited. In view of this admitted position, the petitioners are entitled to be returned the amount paid."*

**15.** *It is also relevant to mention also that this Bench has dealt with similar question in CWP-733-2021 titled as William E Connor Associates & Sourcing (P.) Ltd v. Union of India , [2023] 152 taxmann.com 174 (Punj. & Har.) decided on 04.05.2023, in*



*CWP-23788-2021 titled as Diwakar Enterprises (P.) Ltd v. Commissioner of CGST , [2023] 149 taxmann.com 419/2023 (74) GSTL 202/98 GST 322 (Punj. & Har.), decided on 14.03.2023 and in CWP-8035-2021 titled as Modern Insecticides Ltd v. Commissioner, Central Goods and Service Tax , decided on 19.04.2023 by this Court, and it has been held that the amount deposited during search cannot be retained by the Department if proceedings under Section 74(1) of the Act are not initiated.*

*16. In the present case, the petitioner shortly after depositing the amount of Rs.50.70 lacs had approached the revenue for refund of the same therefore, the ascertainment contemplated under section 74(5) of the Act which amounts to an unconditional determination and in the nature of 'self assessment' by the assessee is not attracted and hence, the said deposit could not be stated to be voluntary deposit by any stretch of imagination, irrespective of the fact that deposits were made in the form of GST DRC-03. In view of the discussion as made above, we are of the opinion that the petitioner deserves the relief as claimed by it and accordingly, mandamus as sought by the petitioner, is granted and it is ordered that the sum of Rs.50.70 lacs, which was collected from the petitioner-M/S Parsvnath Traders during the course of search, shall be refunded to it within a period of 6 weeks from today. The petitioner shall also be entitled to interest @ 6% per annum from the date of deposit till the refund amount is released in its favour."*

24. In ***Samyak Metals Pvt. Ltd's case supra***, the Division Bench of the Punjab and Haryana High Court held as under:

*"6. Reference can now be made to a judgment passed by this Court in Modern Insecticides Ltd. v. Commissioner, Central Goods and Service Tax CWP No.8035 of 2021, wherein a similar issue was examined by this Court. In that case also, officials of the department had conducted a search in the factory premises of the*



*petitioner (therein) and resumed the entire record lying there. On 07.03.2020, they got deposited a sum of Rs.39,15,583/-. Another search was conducted on 15.01.2021 and at that time, the officials of the department took away Director and Chartered Accountant of the petitioner-company to their office at Rishi Nagar, Ludhiana. No notice under section 74 (1) of the CGST Act was served even after expiry of two years. The Govt. instructions dated 25.05.2021 issued by the CBIC with respect to the GST investigation were also examined, which had been issued keeping in view the observations made by the Gujarat High Court in Bhumi Associate v. Union of India, [2021] 124 taxmann.com 429/46 GSTL 36/84 GST 634/SCA No.3196 of 2021 (decided on 16.02.2021). As per the said instructions, no recovery of tax should be made during search, inspection or investigation unless, it is voluntary. In order to avoid harassment to the person, whose premises has been conducted, the voluntary payment in prescribed form i.e. GST DRC-03 can be made after the day of the search. The above instructions have been issued to avoid unnecessary harassment caused to the assessee. The Delhi High Court followed the aforesaid judgment while allowing a petition in Vallabh Textiles v. Senior Intelligence Officer [2022] 145 taxmann.com 596/[2023] 95 GST 751/70 GSTL 3/2022 SCC OnLine Del 4508. In that case, the Delhi High Court examined the provisions of section 74 of the CGST Act and held that deposit of tax made by the assessee during search was not voluntary and the amount cannot be retained, if no summons had been issued under section 74 (1) of the CGST Act. Notice under section 74 (1) of the Act has to be issued within a period of limitation.*

*7. In the facts of the present case, after the search was conducted on 25.02.2021, amount of Rs.35,73,147/- (Tax of Rs.29,48,601/-, interest of Rs. 1,82,255/- and penalty of Rs.4,42,291/-) was deposited by the petitioner under section 74 (5) of CGST Act, 2017. As per Rule 142 (2) of the CGST Rules, when a payment is made in FORM GST DRC-03, the proper officer has to issue acknowledgment, accepting the payment made by the said person*



*in FORM GST DRC-04. In the present case, the said payment was made way back on 26.02.2021. Till date, neither they have issued FORM GST DRC-04 nor issued any notice under section 74 (1) of the CGST Act. The respondents have not followed the Govt. instruction No.01/2022-23 dated 25.05.2022 (Annexure P-10) issued by the CBIC. In these instructions, it is clarified that there is no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/short payment of taxes before or at any stage of such proceedings. It is the duty of the officer to inform the taxpayers regarding the provisions of voluntary tax payment through DRC-03. However, in the present case, as per these instructions, the petitioner has deposited the amount of Rs.35,73,147/-, but the officer has not issued DRC-03 till date. Neither the department has followed the provisions of Rule 142 (2) of the CGST Rules nor has issued any notice under section 74 (1) of the CGST Act."*

25. In the instant case, the material on record discloses that on 23.03.2023, the 3<sup>rd</sup> respondent undertook a raid at the residence of the petitioner and seized a laptop; thereafter, on 24.03.2023, the respondents 3 and 4 along with other officials undertook search and inspection proceedings in the principal place of business of the petitioner, during the course of which, a sum of Rs.10 crores was obtained / received / collected by them from the petitioner on 24.03.2023 itself. In my considered opinion, the material on record clearly indicates that the aforesaid payment of Rs.10 crores by the petitioner to the respondents was involuntary



and the same was not voluntary or by way of self-ascertainment as contended by the respondents for the following reasons:-

(i) It is an undisputed fact that prior to the search and inspection conducted by the respondents on 24.03.2023, they did not issue any notice to the petitioner nor were any proceedings to ascertain, adjudicate or determine the tax, interest and penalty payable by the petitioner which indicates that there was no occasion for the petitioner to pay the said sum voluntarily by way of self-ascertainment to the respondents, thereby indicating that the said amount was not paid voluntarily by the petitioner.

(ii) Rule 142(2) of the CGST Rules, 2017, contemplates that upon the petitioner making payment in Form GST DRC-03, the respondents are bound to issue an acknowledgment in Form GST DRC-04 to the petitioner; undisputedly, respondents did not issue any such acknowledgment to the petitioner which is a circumstance to clearly indicate that the said amount was not a voluntary payment made by the petitioner.

(iii) Prior to the search and inspection made by the respondents, there was no demand made by the respondents in relation to the amount paid by the petitioner under any of the



provisions of the CGST Act, 2017, which is yet another circumstance to indicate that there was no warrant / reason for the petitioner to make voluntary payment during the course of search and inspection proceedings.

(iv) The material on record also indicates that even at the time of payment by the petitioner, the details, material particulars, quantification etc., of the alleged self - ascertainment and voluntary payment by the petitioner are conspicuously absent except for filling up Form DRC-03 which merely contains the amount without additional details in this regard; interestingly, there are no other contemporaneous document in this regard, thereby establishing that the payment made by the petitioner cannot be construed or treated as voluntary as contended by the respondents.

(v) It is pertinent to note that the respondents would be entitled to invoke Section 74 only in cases of tax not paid / short paid / erroneously refunded / input tax credit wrongly availed or utilised by reason of fraud or any wilful - misstatement or suppression of facts; it follows therefrom that the provisions contained in Section 74 would apply only if the respondents were to prove the aforesaid allegations contemplated in the said provision



made against the assessee; in such proceedings to be initiated under Section 74, it is highly inconceivable that a tax payer / assessee in respect of whom, search, seizure and inspection proceedings are being conducted by the respondents would voluntarily make payment thereby exposing himself to the risk of admitting that he is guilty of the allegations contemplated in Section 74 of the CGST Act; in other words, in the light of Form GST DRC-03 said to have been submitted by the petitioner along with the payment by invoking Section 74 (5) of the CGST Act, it is highly / inherently improbable that the said payment was made voluntarily by the petitioner that too during the course of search, seizure and inspection proceedings and even before he became aware or came to know whether proceedings under Sections 73 to 74 would be initiated against him and as such, the payment made by the petitioner cannot be said to be voluntary by way of self-ascertainment on this ground also.

(vi) A perusal of the material on record will clearly indicate that prior to the payment made by the petitioner, there was no proceeding or order by the respondents which adjudicated or quantified or ascertained the amount payable by the petitioner nor



any such quantification or ascertainment done / made by the petitioner for the purpose of arriving at the sum of Rs.10 crores paid by the petitioner, which was not preceded by any order or basis so as to arrive at the said figure; to put it differently, in the absence of any material to establish as to how the petitioner or quantified or arrived at a sum of Rs.10 crores paid by him and in the absence of requisite / necessary material particulars / details in this regard, it cannot be said that the said sum paid by the petitioner was voluntary and by way of self - ascertainment as contended by the respondents whose contention in this regard deserves to be rejected.

(vii) A perusal of the material pertaining to search, inspection and seizure proceedings comprising of mahazar, seizure order etc., will indicate that on 23.03.2023 itself, the residence of the petitioner was inspected by the respondents who seized one laptop from the petitioner; on the very next day i.e., on 24.03.2023, the respondents seized various movable, articles comprising of account books, desktops, server disks, mobile phones, hard disks, laptop etc., from the business premises of the petitioner and all necessary data that was required for the purpose of self-



ascertainment had been seized from the petitioner by the respondents; it follows therefrom that at the time of payment, there could not have been any material, accounts, etc., available with the petitioner that would enable him to proceed with self-ascertainment and accordingly, voluntarily make payment of Rs.10 crores to the respondents; in other words, in the light of the undisputed fact that all necessary material, account etc., which was the basis for self-ascertainment having been seized by the respondents, it is highly improbable that the petitioner was in a position to carryout self-ascertainment and make payment which is yet another circumstance to establish that the said payment was not voluntary as falsely contended by the respondents, whose contention is liable to be rejected on this score also.

(viii) As stated supra, except conducting search, inspection and seizure proceedings, no other proceedings or order were initiated or passed by the respondents prior to the payment made by the petitioner and no ascertainment had been made / done by the respondents till that time; the undisputed fact that the respondents themselves ascertained the actual amount payable by the petitioner only during the pendency of the present petition by



issuance of intimation in Form GST DRC-01A dated 17.02.2025, is sufficient to come to the conclusion that prior thereto and at the time of search, seizure and inspection proceedings during the course of which, payment was made, there was no ascertainment of the actual tax, interest and penalty payable by the petitioner which also establishes that the payment made by the petitioner was involuntary and not on his own account but at the instance of the respondents, whose contentions are liable to be rejected on this ground also.

(ix) A perusal of the provisions contained in Section 74(5) of the CGST Act will indicate that voluntary payment by the petitioner would have to be made as per the procedure prescribed in the said provision, viz., firstly, ascertain the actual tax payable by him after verification / scrutiny of his accounts, secondly, calculate the interest payable by him in terms of Section 50 of the CGST Act, which provides for discretion in payment of interest upto 18% / 24% p.a. and thirdly, to calculate the penalty at 15% on the tax payable by him; in other words, this process of self-ascertainment calls for and demands verification / scrutiny of accounts and calculation of discretionary rate of interest up to 18% / 24% which is not a fixed



rate of interest and penalty, all of which is highly improbable and physically / humanly impossible to be done by a tax payer / assessee who is already under immense pressure on account of search, inspection and seizure operation being conducted, particularly when all equipment which would be required / necessary for such self-ascertainment was not available with the petitioner and as such, even on this ground also, I am of the view that the payment made by the petitioner was clearly not voluntary and at the behest / instance of the respondents during the course of their proceedings.

(x) A perusal of the payment made by the petitioner in Form GST DRC-03 will indicate that the same is made under Section 74(5) of the CGST Act which mandates that such voluntary payment of tax should have been made by the petitioner along with interest under Section 50 of the CGST Act and penalty; in this context, the said payment in Form GST DRC-03 will indicate that no payment is made by the petitioner towards interest or penalty and the relevant columns in this regard are shown as 'Nil' which is yet another circumstance to indicate that the payment was not made by the petitioner voluntarily in terms of Section 74(5) of the



CGST Act, 2017, as contended by the respondents whose contentions are liable to be rejected.

(xi) A perusal of the material on record will indicate that the payment of Rs.10 crores by the petitioner during the course of search, inspection and seizure proceedings is contrary to the directions issued by the respondents themselves in Instruction No.1/2022-23 dated 25.05.2022, in which the officials of the respondents have been cautioned / warned against taking steps to collect / receive / obtain voluntary payment and reiterated by the Apex Court in ***Radhika Agarwal's case supra***, and as such, the contentions of the respondents cannot be accepted on this ground also.

26. In view of the aforesaid facts and circumstances and the principles enunciated in the aforesaid judgments, I am of the view that the obtainment / collection / receipt of a sum of Rs.10 crores by the respondents from the petitioner at the time of search, inspection and seizure operations is not voluntary or by way of self-ascertainment and the same is wholly illegal, arbitrary and contrary to law and the provisions of the CGST Act and also without jurisdiction or authority of law and the said amount deserves to be



refunded back to the petitioner together with interest at the rate of 6% p.a. within a stipulated timeframe.

27. In the result, I pass the following:-

**ORDER**

(i) Petition is hereby allowed.

(ii) The petitioner is declared to be entitled to refund of Rs.10 crores together with interest @ 6% p.a. from 24.03.2023 till the date of payment.

(iii) The respondents are directed to refund the aforesaid amount of Rs.10 crores together with interest @ 6% p.a. from 24.03.2023 till the date of payment to the petitioner within a period of two months from the date of receipt of a copy of this order.

(iv) All rival contentions between the parties pursuant to the show cause notice and adjudication proceedings of the respondents are kept open and no opinion is expressed on the same.

**Sd/-  
(S.R.KRISHNA KUMAR)  
JUDGE**

Srl.