



Indirect Tax Update

Summary of instruction issued by investigation wing

Key Highlights:

- ✓ Voluntary payment of tax, interest & penalty by taxpayer before SCN is permissible.
- ✓ Officers cannot force or coerce the taxpayers to make payment during the search or inspection or investigation.
- ✓ Strict disciplinary action will be taken against the officer if he forces or coerces.

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Deposit of tax during the course of search, inspection or investigation.

[Instruction No. 01/2022-23[GST-Investigation] Dated 25th May 2022]

Instances were 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 the “recovery” during the course of search or inspection or investigation. Some of the taxpayers also approached Hon’ble High Courts in this regard.

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.

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.

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.

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.

H & A Comments: -

It is welcome move by board to avoid the harassment by the officers of taxpayers. There had been numerous instances where the officers have forced the taxpayers to deposit the amount during search or investigation or inspection. Officers were creating an environment of fear by coercing to deposit the amount. There are various judgements in which it had been clearly held that involuntary payment/forced payment made during the search or investigation or inspection is not sustainable and should be refunded. Few summarised below

A. The Hon'ble Delhi High Court in the matter of MakeMyTrip (India) Pvt. Ltd. vs. Union of India, 2016 (44) STR 481 DEL, has held that **if any amount is collected during investigation without determination of the liability, the same is liable to be refunded.**

B. **Bundl Technologies Private Limited Vs Union of India** (Karnataka High Court) [WP 4467/2021 (T-RES) dated September 14, 2021],

Facts: During the course of investigation, officers of DGGI issued spot summons to the Directors and employees of the Company, recorded their statements and subsequently, a

sum of Rs. 15 Crores was deposited by the Company in the GST Cash Ledger on 30.11.2019 at an odd hour of the night i.e. about 4:00 A.M. Again, on 27.12.2019, the Directors of the Company were forced to deposit a further sum of around Rs. 12.5 Crores at about 1:00 A.M.

Issue: Whether the collection of a sum during the course of investigation in the guise of voluntary payment u/S. 74(5) of the CGST Act is authorised by law?

Judgment: Karnataka held that Swiggy's **payment made during investigation is not considered as ascertained tax**, refund of same allowed. Payment made as goodwill gesture during investigation cannot be taken as self-ascertained tax. Furthermore, the Honorable Karnataka HC **directed the Department to refund money deposited during the investigation.**

- C. Vodafone Essar South Ltd. vs. Union of India, 2009 (237) ELT 35 (BOM) held that without adjudication of liability, the assessee **should not be forced to pay an amount during the course of an investigation.**
- D. In M/s Bhumi Associate vs. Union of India, [2021 (46) G.S.T.L. 36 (Guj.)] the following guidelines set out to regulate the powers of officers carrying out search and seizure and to safeguard the interest of the assessee:
- (a) **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 Goods and Services Tax Act, 2017 under any circumstances.
 - (b) 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.
 - (c) 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.
 - (d) 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. Thus, it is settled that search and seizure powers under the

CGST Act have to be exercised by the proper officer within the bounds of law.

In light of the various judgments and latest instruction, a taxpayer may note the following points in respect of a search or inspection or investigation:

- (a) There is no legal obligation to pay any amount during the pendency of an investigation without adjudication of liability.
- (b) Any payment made during the course of investigation could be considered as a factor in determining that the payment was involuntary.
- (c) In case of any payment during investigation, it is important to keep record by writing acknowledged communication/letter to the department if taxpayer paid involuntarily/by coercion.
- (d) A complaint should be made to Pr. Chief Commissioners/Chief Commissioners, CGST Zones and Pr. Director General, DGGI if amount deposited during search or investigation or inspection was under undue pressure from officers.
- (e) A refund application has to be filed at the earliest from the date of the involuntary payment if already made payment due to coercion by officers.

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