

**1. Delhi High Court in Vallabh Textiles<sup>1</sup> - Payments made during Investigation having no colour of voluntariness, should be refunded to the assessee, since they are collected without following procedure of law:**

A search was carried out by the tax authorities on the petitioner from 16<sup>th</sup> February to 17<sup>th</sup> February 2022. During the course of search, the petitioner has paid tax amounting approximately to Rs 1.8 Crore. The said payments were made between 01:28 AM to 07:03 AM on 17<sup>th</sup> February 2022. The petitioner stated that the said payments were not made voluntarily but only on the coercion of the tax authorities. The tax authorities contend that since payments were made vide DRC-03 challans, the allegation of coercion is an afterthought.

The Court after going through the submissions made by both the parties, has stated that Rule 142(1A) of CT Rules<sup>2</sup> clearly provides that the proper officer has to issue DRC-04 acknowledging the payment of tax made by person and in the facts it is clear that although the payments were made in DRC-03, no document has been placed by revenue (tax authorities) that they have accepted the payment. Hence, the stand taken by the revenue that the payments are voluntary payments and not out of coercion is required to be set aside. Further, the court stated the fact that the said taxes were paid in the early morning hours during search also indicate the payment is out of coercion.

The Court stated that the tax authorities have violated instructions in Instruction No 01/2022-23 dated 25.05.22 issued by CBIC (dealing with the subject of deposit of tax during the course of search, inspection or investigation) and has not adopted the principles laid by Gujarat High Court in Bhumi Associate vs Union of India (MANU/GJ/0174/2021). In Bhumi Associate (supra), it was clearly stated that there should not be any tax payment during the search. Even if it is voluntary payment, the same should be after the closure of search. The Court stated that the said guidelines were violated and accordingly asked the tax authorities to refund the tax along with interest.

**2. Kerala High Court in Manappuram Finance Limited<sup>3</sup> - No GST on the Notice Pay Recovery made by Employer:**

A writ petition was filed by the petitioner against the order of appellate authority, who rejected the refund of GST paid on notice pay amounts recovered from the employees who left the petitioner. The petitioner has relied upon the Circular 178/10/2022- GST, wherein it was clarified that the notice pay amounts recovered does not amount to consideration to attract tax. The petitioner argued that though the Circular was issued only on 03.08.22, the same should be applied for past transactions also. The revenue contended that whether the circular

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<sup>1</sup> [2022] 145 taxmann.com 596 (Delhi)

<sup>2</sup> Central Goods and Service Tax Rules, 2017

<sup>3</sup> [2022] 145 taxmann.com 422 (Kerala)

applies prospectively or retrospectively has to be decided by the GST Tribunal and High Court cannot decide the same in writ proceedings.

The High Court stated that in light of the Circular, it is now clear that the said amounts does not attract tax and in light of decisions of KP Varghese<sup>4</sup> , the circular is binding on the tax authorities and since the same was issued to clarify the doubts, the same should be applied retrospectively. Accordingly, the High Court restored all the refund applications to the refund sanctioning authority to grant the refund.

**3. Andhra Pradesh High Court in BAMSM Constructions<sup>5</sup> - 'Proper Officer' who is authorized to conduct inspection can also be the proper officer to issue order under Section 73 and Others:**

The petitioner was inspected by Deputy Commissioner of State Tax. The inspection was authorized by Joint Commissioner of State Tax. After inspection, a show cause notice has been issued under Section 73 of ST Act, which was adjudicated, and an order was passed.

The said order was challenged before the High Court by invoking writ jurisdiction. Among various other aspects, the petitioner challenged the order contending that the Deputy Commissioner was only authorized for inspection and cannot be a 'proper officer' for passing order under Section 73. The petitioner contended that though Deputy Commissioner is having territorial jurisdiction over the petitioner, the 'proper officer' would be the Assistant Commissioner. Since the Assistant Commissioner has not passed the order, the order is prayed to be set aside.

The High Court stated that there is nothing prescribed under the law, which contemplates that a separate authorization is required for issuance of notice under Section 73. Since the Deputy Commissioner has territorial jurisdiction over the petitioner and he is being mentioned as 'proper officer', the order passed by him cannot be said without jurisdiction. The High Court also stated that, whether the order passed by Deputy Commissioner or Assistant Commissioner, the appeal lies with Joint Commissioner, Appellate Authority and since there was no change in the authority before whom the appeal lies, there does not really exist any issue. Accordingly, the High Court has set aside the petition.

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<sup>4</sup> 1981 4 SCC 173

<sup>5</sup> 2022 (12) TMI 125 – Andhra Pradesh High Court

4. **Andhra Pradesh High Court in Varshan Enterprises<sup>6</sup> – Rule 97A allows manual application for refund of tax – Hence, the Department cannot insist for mandatory online application of refund:**

The petitioner is a registered person in the state of Andhra Pradesh. The petitioner has engaged in supplying telecom pipeline lying services in the state of Telangana to M/s Vodafone Mobile Services Limited. The service receiver has another office in Mumbai. The petitioner has inadvertently while filing returns have mentioned the GSTIN of Mumbai office instead of GSTIN of Telangana of service receiver. Since, the service receiver in Telangana has not received the invoice details, he has not paid tax amount to the petitioner.

When the petitioner tried to amend the details in GST Returns, so that the service receiver in Telangana can claim credit, the portal did not allow the same, because of exhaustion of time for amending the original details. The petitioner has written to the Superintendent asking him to refund the tax or adjust the tax against other liabilities. The Superintendent rejected such claim and asked the petitioner to follow the procedure mentioned in Circular 20/16/04/18-GST, wherein the procedure for claiming refund under Section 54 of CT Act is discussed.

The High Court after going through the arguments, held that the procedure as mentioned in Para 3 of Circular 20/16/04/18-GST, asking the petitioner to file refund application online cannot be adhered because, the petitioner's case would not fit therein. The High Court stated since Rule 97A still allows filing of manual application for refund the same cannot be rejected because the Circular states refund has to be filed only through online.

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<sup>6</sup> 2022 (12) TMI 1035 – Andhra Pradesh High Court