



**N.A.SHAH ASSOCIATES LLP**  
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# **TAX JURISPRUDENCE**

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CASE LAW ALERT – JAN 2024  
VOL -1

## EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER INDIRECT TAXES

We are pleased to draw your attention to following important decisions which might be useful for you to take call on tax position.

Case & Citation	Issue Involved	Decision
<a href="#">Santosh Kumar Gupta vs UOI [TS-631-HC(DEL)-2023-GST]</a>	Whether payment of tax during search or inspection would be termed as voluntary payment of tax?	The Hon'ble High Court held that payment of tax without following stipulated procedure would not be voluntary payment and should be refunded to petitioner.
	Whether search conducted by central officers will be considered illegal because prior inspection or search was conducted by state authorities?	The GST Act does not preclude central officers from conducting inspection for concluding an ongoing investigation because prior inspection or search was conducted by state authorities.

The brief analysis of above referred decisions and rulings are given below.

## INDIRECT TAX

### **Santosh Kumar Gupta vs UOI [TS-631-HC(DEL)-2023-GST]**

#### **Facts in brief & issues involved:**

- ♦ Search was conducted u/s 67 of CGST Act pursuant to authorization issued by Additional Commissioner, Anit Evasion in Form GST INS-01 at the business premises of the petitioner.
- ♦ During the search, the petitioner was compelled to deposit a sum of Rs. 10,00,000/- through FORM GST DRC-03 at 09.00 p.m. on the laptops carried by the officers of the visiting team.
- ♦ The petitioner has filed the writ petition within 10 days from the deposit challenging the impugned search on principally two grounds:
  - i) Authorization of the search was issued mechanically and that there was no reason to believe that any of the grounds as set out under Section 67(1)(a) of the CGST Act were satisfied.
  - ii) Said proceedings are illegal as prior to the said search, Delhi Goods & Service Tax Authorities has initiated similar proceedings.
- ♦ Further, the petitioner prays that directions be issued to the respondents to refund the sum of Rs. 10,00,000/- as being collected illegally.

#### **Contention of the Respondent**

- ♦ During investigations and enquiries, it was found that registration of some taxpayers, from whom petitioner has made purchases, were cancelled, or suspended due to being found non-existent during physical verification of principal place of business.
- ♦ It was found that the petitioner had availed Input Tax Credit ['ITC'] from M/s Hari Om Chemicals who was found to be non-existent. Thus, the respondent had reason to believe that the petitioner had wrongfully availed the ITC.

Further, the petitioner has availed total ITC amounting to Rs. 3.24 crores (approx.) from various firms (19 in numbers) whose registration were cancelled. Hence, petitioner is engaged with fake firms for wrongful availment of ITC.

- ♦ The sufficiency of the reasons is not amenable to judicial review. So long as there is material or information, which supplies a rational basis for forming a belief that the conditions as stipulated u/s 67(1) of the CGST Act are satisfied, the search or inspection authorized under the said section cannot be faulted.
- ♦ The Respondent claims that, petitioner has voluntarily deposited Rs. 10,00,000/- by furnishing FORM GST DRC 03 on the said date.


#### **Observations & Decision of the Honorable High Court of Delhi**

- ♦ It is apparent that the central officers had conducted the inspection pursuant to an ongoing investigation in regard to creation of fake firms to fraudulently avail ITC. The petitioner's contention of inspection conducted is illegal and is not justifiable as the provisions of Section 6(2)(b) of the CGST Act do not preclude the central officers from conducting an inspection for concluding ongoing investigation merely because prior inspection or search was conducted by the DGST authorities (state authorities).
- ♦ In respect of refund of Rs. 10,00,000/-, the High Court relied on the decision in case of ***Vallabh Textiles v. Senior Intelligence Officer & Ors. (2022 SCC OnLine Del 4508)*** and ***Lovelesh Singhal v. Commissioner, Delhi Goods & Service Tax & Ors. (2023:DHC:8631-DB)*** wherein it was concluded that payment of tax by not following the stipulated procedure would not be construed as voluntary payment. Accordingly, the respondents are directed to refund the sum of Rs. 10,00,000/- to the petitioner.
- ♦ The High Court further clarified that this order would not preclude the respondent for taking any steps for protection of the interest of the Revenue including passing an order under Section 83 of CGST Act, 2017 or Rule 86(A) of CGST Rules, 2017, if the conditions for the exercise of such powers are satisfied.




### **NASA comments**

- ♦ Any amount collected without following prescribed procedures in GST law shall not be considered as voluntary and assessee can claim refund of such amount.
- ♦ On adverse side, Central and State authorities both can search the premises of the assessee which may be a duplication of work at assessee end.



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