

Reserved on : 11.09.2025
Pronounced on : 07.11.2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.17779 OF 2025 (T - RES)

BETWEEN:

M/S. GUNNAM INFRA PROJECTS PRIVATE LIMITED
REGISTERED UNDER THE COMPANIES ACT, 2013
NO.2, 19/6, STATION ROAD, NEAR MULBERRY WOODS,
CARMELARAM, JANATHA COLONY, DODDAKANNELLI,
BENGALURU, KARNATAKA - 560035.

REPRESENTED BY ITS
AUTHORISED REPRESENTATIVE
SHRI GUNNAMREDDY SAI TEJASWIN REDDY.

... PETITIONER

(BY SMT.LOCHANA S. BABU, ADVOCATE)

AND:

1 . THE UNION OF INDIA
REPRESENTED HEREIN BY THE SECRETARY
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
GOVERNMENT OF INDIA, NORTH BLOCK,
NEW DELHI – 110 001.

- 2 . THE SUPERINTENDENT OF CENTRAL TAX
HEADQUARTERS / ANTI-EVASION UNIT
O/O THE PRINCIPAL COMMISSIONER OF CENTRAL TAX
GST EAST COMMISSIONERATE,
BANGALORE EAST DIVISION
TTMC-BMTC BUILDING, HAL OLD AIRPORT ROAD,
DOMLUR, BENGALURU – 560 071.
- 3 . THE PRINCIPAL COMMISSIONER OF CENTRAL TAX
BANGALORE EAST DIVISION
4TH FLOOR, TTMC-BMTC BUILDING,
HAL OLD AIRPORT ROAD, DOMLUR,
BENGALURU – 560 071.
- 4 . THE SENIOR INTELLIGENCE OFFICER
DGGI, BANGALORE ZONAL UNIT
NO. 112, S.P. ENCLAVE, K.H. ROAD
ADJACENT TO KARNATAKA BANK
BENGALURU – 560 027.
- 5 . THE ASSISTANT DIRECTOR OF DGGI
O/O PRINCIPAL ADDITIONAL DIRECTOR, DGGI
DGGI, BANGALORE ZONAL UNIT
NO. 112. S.P. ENCLAVE, K.H. ROAD
ADJACENT TO KARNATAKA BANK
BENGALURU – 560 027.
- 6 . THE DEPUTY COMMISSIONER OF CENTRAL TAX
BANGALORE EAST DIVISION
4TH FLOOR, TTMC-BMTC BUILDING
HAL OLD AIRPORT ROAD, DOMLUR
BENGALURU – 560 071.
- 7 . THE DEPUTY COMMISSIONER
DGGI, BANGALORE ZONAL UNIT
NO. 112, S.P. ENCLAVE, K.H. ROAD
ADJACENT TO KARNATAKA BANK

BENGALURU – 560 027.

... RESPONDENTS

(BY SRI M.N.KUMAR, CGSPC FOR R-1;
SRI M.UNNIKRISHNAN, ADVOCATE FOR R-2, R-3 AND R-6;
SRI MADHU N.RAO, ADVOCATE FOR R-4 AND R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO (I) QUASHING THE RFD-03 DEFICIENCY MEMOS BEARING NOS. ZD290525068873S; ZD290525068876M; ZD2905250689360 AND ZD290525068948J, ALL OF WHICH DATED 20.05.2025 VIDE ANNEXURE A TO A3, ISSUED BY R6; (II) QUASHING THE RFD-03 DEFICIENCY MEMOS BEARING NOS. ZD2905250728390, ZD290525072859M; ZD290525072866R AND ZD2905250728504, ALL OF WHICH DATED 21.05.2025 VIDE ANNEXURE-B TO B3 ISSUED BY R6; (III) ISSUE A WRIT OF MANDAMUS, OR SUCH OTHER WRIT, ORDER OR DIRECTION(S), TO RESPONDENT NO. 06 TO PROCESS THE REFUND APPLICATIONS FILED BY THE PETITIONER IN ACCORDANCE WITH LAW AND; (IV) ISSUE A WRIT OF MANDAMUS, OR SUCH OTHER WRIT, ORDER OR DIRECTION(S), TO RESPONDENT NO. 06 ISSUE INTEREST ON DELAYED REFUND IN ACCORDANCE WITH LAW AND; (V) TO ISSUE ORDER(S), DIRECTIONS, WRIT(S) OR ANY OTHER RELIEF, HOLDING THAT THE ACTIONS OF THE RESPONDENTS ARE ILLEGAL AND AWARD A COST APPROPRIATE AS THIS HON'BLE COURT DEEMS IT FIT AND PROPER IN THE FACTS AND CIRCUMSTANCE OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY; (VI) TO ISSUE ORDER(S), DIRECTIONS, WRIT(S) OR ANY OTHER RELIEF AS THIS HON'BLE COURT DEEMS IT FIT AND PROPER IN THE FACTS AND CIRCUMSTANCE OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.09.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner – assessee is at the doors of this Court calling in question certain deficiency memos issued by the 6th respondent - Deputy Commissioner of Central Tax on two different dates i.e., on 20-05-2025 and 21-05-2025, rejecting the petitioner's application for refund of the amount in DRC-03 forms.

2. Facts in brief, germane, are as follows:

2.1. The petitioner - assessee is a private limited company, registered under the provisions of the Companies Act, 2013 and is said to be duly registered under the Goods and Services Tax enactment. On 08-06-2023, officers from the Director General of GST Intelligence and the Anti-Evasion Unit conduct simultaneous inspection at the registered office premises of the petitioner-Company purportedly under Section 67(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act'). During the course of the proceedings, it is the case of the petitioner that he was compelled to make immediate payment of Rs.2,42,00,000/- in form DRC-03

as obtaining under Section 74(5) of the CGST Act, to avoid threat of adverse consequences.

2.2. After the inspection conducted on 08-06-2023, summons was issued on 24-11-2023 directing the authorized representative of the petitioner to appear in person for conduct of an enquiry. The petitioner claims to have appeared before the concerned Officers, and during the proceedings, it is said that they once again demanded payment of Rs.22,46,400/- purportedly to cover the liability, without furnishing any determination or quantification of liability. The issuance of summons goes on this way. Between 05-11-2024 and 06-02-2025, 4 more summons are issued directing the presence of the authorized representative of the petitioner. The assessee is said to have complied with all the summons and appears in person before the concerned authorities. Between the dates 08-06-2023 and 29-05-2024 the assessee makes four payments in DRC-03 under Section 74(5) of the CGST Act, totally amounting to Rs.3,11,59,298/-.

2.3. After due compliance with the summons issued by the respondent officials, on 09-05-2025 and 16-05-2025, the petitioner submits two applications seeking refund of the amount so deposited, under Section 54 of the CGST Act, through a form RFD-01. The 6th respondent - Deputy Commissioner of Central Tax, on 20-05-2025 issues deficiency memos in form RFD-03 against the refund applications filed in the RFD-01 forms on the ground that relevant supporting documents were not appended to the application seeking refund.

2.4. It is the averment in the petition that the assessee had enclosed all the documents and therefore, there was nothing afresh to be submitted. However, the petitioner still submitted the RFD-01 forms afresh along with all the relevant documents, on 20-05-2025. The refund is once again rejected by the 6th respondent - Deputy Commissioner of Central Tax by deficiency memos on 21-05-2025, on the same ground. Therefore, the assessee is before this Court seeking quashment of the deficiency memos dated 20-05-2025 and 21-05-2025, and a direction to process the refund applications and the interest on delayed refund.

3. Heard Smt Lochana S Babu, learned counsel appearing for petitioner, Sri M N Kumar, learned Central Government Senior Panel Counsel appearing for respondent No.1, Sri Madhu N Rao, learned counsel appearing for respondents 4 and 5 and Sri M Unnikrishnan, learned counsel appearing for respondents 2, 3 and 6.

4.1. The learned counsel appearing for the petitioner would vehemently contend that refund applications ought to have been processed by the proper officer, as it was duly filled along with all necessary documents in place. The proper officer has no jurisdiction to adjudicate over the merit of a refund application and is required to process the refund application, if the application is complete and in conformity with the statutory requirements. The issuance of deficiency memos without any legally tenable or reasoned justification, amounts to colorable exercise of administrative power and would be in contravention of Section 54 of the CGST Act. The GST Intelligence ought to have issued an acknowledgement in terms of Rules 90(2) and Rule 92(1) of the of the Central Goods

and Services Tax Rules, 2017 ('CGST Rules'). since the petitioner-assessee has duly submitted the refund applications.

4.2. The learned counsel would submit that a Division Bench of this Court in the case of **INTELLIGENCE OFFICER, DIRECTORATE GENERAL OF GST INTELLIGENCE, BENGALURU v. KESAR COLOR CHEM INDUSTRIES**, reported in **2025 SCC OnLine Kar 18697**, has held that recovery made during investigation without adjudication was contrary to law and in violation of Article 265 of the Constitution. The learned counsel would also place reliance upon the judgment of the Division Bench of the High Court of Delhi in the case of **AB ENTERPRISES v. COMMISSIONER OF DELHI GOODS AND SERVICES TAX**, reported in **2023 SCC Online Del 7434**, wherein the Division Bench holds that an application can be rejected only if the application is incomplete in terms of Rule 89 of CGST Rules. The withholding of funds by the respondent-Authorities is in violation of Article 265 of the Constitution of India and that no tax shall be collected except with the authority of law.

5. Contrariwise, the learned counsel Sri Madhu N Rao, representing respondents 4 and 5-CGST Intelligence, and learned counsel Sri M Unnikrishnan, learned counsel appearing for respondents 2, 3 and 6-Central Tax-Anti-Evasion Unit would contend that the assessee has not proved that payments made under DRC-03 was under any duress. Mere filing of refund under Section 54 of the CGST Act does not entitle the assessee for a refund, especially when the payment is reflected as a voluntary payment; the assessee has not submitted any documents substantiating their claims that the payments have been made under coercion or under duress. The impugned deficiency memos have been issued in strict consonance with Rule 90(3) of the CGST Rules, since the application of the petitioner-assessee was incomplete. The deficiency memos did not refuse refund to the assessee on merits, but merely pointed out deficiency in documentation while applying for refund. The assessee was not barred from resubmitting the application complying with the deficiencies. Therefore, the learned counsel appearing for the respondents would, in unison, seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

7. The afore-narrated facts are not in dispute. The issue that falls for consideration is, whether the deficiency memos suffer from want of legal tenability and requires a direction for processing of refund?

8. To consider the issue, certain provisions of the CGST Act are necessary to be noticed. They read as follows:

"50. Interest on delayed payment of tax.—(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 or Section 74-A] in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

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54. Refund of tax.—(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of Section 49, may claim such refund in such form and manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under Section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of two years from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;

- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

[* * *]

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by—

- (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and
- (b) such documentary or other evidence (including the documents referred to in Section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in Section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund

on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, [* * *] in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

- (a) refund of tax paid on ["export" and "exports"] of goods or services or both or on inputs or input services used in making such zero-rated supplies;
- (b) refund of unutilised input tax credit under sub-section (3);
- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) refund of tax in pursuance of Section 77;
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(8-A) The Government may disburse the refund of the State tax in such manner as may be prescribed.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due [* * *] to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

- (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
- (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in Section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the

Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of Section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under Section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

(15) Notwithstanding anything contained in this section, no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods is subjected to export duty.]

Explanation.—For the purposes of this section,—

- (1) “refund” includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).
- (2) “relevant date” means—
 - (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

- (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- (ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;
- (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—
 - (i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or
 - (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;
- (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

- (e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under Section 39 for the period in which such claim for refund arises;
- (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- (h) in any other case, the date of payment of tax.

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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) 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.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement,

containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of Section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(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.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the 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.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under Section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under Section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.

Explanation 1.—For the purposes of Section 73 and this section,—

- (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under Section 132;
- (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under Section 73 or Section 74, the proceedings against all the persons liable to pay penalty under [Sections 122 and 125] are deemed to be concluded.

Explanation 2.— [* * *]”

(Emphasis supplied)

Certain Rules are made in exercise of powers conferred under the provisions of the Act. The relevant rules of the CGST Rules that are necessary to be noticed are as follows:

"89. Application for refund of tax, interest, penalty, fees or any other amount.— (1) Any person, except the persons covered under notification issued under Section 55, claiming refund of [any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of Section 49 or] any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file, subject to the provisions of Rule 10-B, an application electronically in Form GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

[* * *]

Provided that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the—

- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

Provided further that in respect of supplies regarded as deemed exports, the application may be filed by,—

- (a) the recipient of deemed export supplies; or
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an

undertaking to the effect that the supplier may claim the refund:

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under Section 27 at the time of registration, shall be claimed only after the last return required to be furnished by him has been so furnished.

Explanation.—For the purposes of this sub-rule, “specified officer” means a “specified officer” or an “authorised officer” as defined under Rule 2 of the Special Economic Zone Rules, 2006.

(1-A) Any person, claiming refund under Section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in Form GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.

(1-B) Any person, claiming refund of additional integrated tax paid on account of upward revision in price of the goods subsequent to exports, and on which the refund of integrated tax paid at the time of export of such goods has already been sanctioned as per rule 96, may file an application for such refund of additional integrated tax paid, electronically in FORM GST RFD-01 through the common portal, subject to the provisions of rule 10-B, before the expiry of two years from the relevant date as per clause (a) of Explanation (2) of Section 54:

Provided that the said application for refund can, in cases where the relevant date as per clause (a) of Explanation (2) of Section 54 of the Act was before the date on which this sub-rule comes into force, be filed before the expiry of two years from the date on which this sub-rule comes into force.

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely—

- (a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of Section 107 and sub-section (8) of Section 112 claimed as refund;**
- (b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods, other than electricity;**
- (ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;**
- (bb) a statement containing the number and date of export invoices along with copy of such invoices, the number and date of shipping bills or bills of export along with copy of such shipping bills or bills of export, the number**

and date of Bank Realisation Certificate or foreign inward remittance certificate in respect of such shipping bills or bills of export along with copy of such Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Bank, the details of refund already sanctioned under sub-rule (3) of rule 96, the number and date of relevant supplementary invoices or debit notes issued subsequent to the upward revision in prices along with copy of such supplementary invoices or debit notes, the details of payment of additional amount of integrated tax, in respect of which such refund is claimed, along with proof of payment of such additional amount of integrated tax and interest paid thereon, the number and date of foreign inward remittance certificate issued by Authorised Dealer-I Bank in respect of additional foreign exchange remittance received in respect of upward revision in price of exports along with copy of such foreign inward remittance certificate, along with a certificate issued by a practicing chartered accountant or a cost accountant to the effect that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to exports and copy of contract or other documents, as applicable, indicating requirement for the revision in price of exported goods and the price revision thereof, in a case where the refund is on account of upward revision in price of such goods subsequent to exports;

- (bc) a reconciliation statement, reconciling the value of supplies declared in supplementary invoices, debit notes or credit notes issued along with relevant details of Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Bank, in a case where the refund is

on account of upward revision in price of such goods subsequent to exports;

- (c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;**
- (d) a statement containing the number and date of invoices as provided in Rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;**
- (e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;**
- (f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;**
- (g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;**

- (h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of Section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;**
- (i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;**
- (j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;**
- (k) a statement showing the details of the amount of claim on account of excess payment of tax and interest, if any, or any other amount paid;**
- (ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;**

- (kb)** a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;
- (l)** a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of Section 54;

- (m)** a Certificate in Annexure 2 of Form GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of Section 54:

Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

Explanation.— For the purposes of this rule—

- (i) in case of refunds referred to in clause (c) of sub-section (8) of Section 54, the expression “invoice” means invoice conforming to the provisions contained in Section 31;**
- (ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.**

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of Section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula—

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷ Adjusted Total Turnover

Where,—

- (A) “Refund amount” means the maximum refund that is admissible;
- (B) “Net ITC” means input tax credit availed on inputs and input services during the relevant period [* * *];
- (C) “Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly

placed, supplier, as declared by the supplier, whichever is less [* * *];

- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;
- (E) "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under clause (112) of Section 2, excluding the value of exempt supplies other than zero-rated supplies during the relevant period;
- (F) "Relevant period" means the period for which the claim has been filed.

Explanation.—For the purposes of this sub-rule, the value of goods exported out of India shall be taken as—

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply,

whichever is less.

(4-A) [* * *]

(4-B) [* * *]

(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:—

Maximum Refund Amount = [(Turnover of inverted rated supply of goods and services) × Net ITC ÷ Adjusted Total Turnover] – [{tax payable on such inverted rated supply of goods and services × (Net ITC ÷ ITC availed on inputs and input services)}].

Explanation:— For the purposes of this sub-rule, the expressions—

- (a) Net ITC shall mean input tax credit availed on inputs during the relevant period [* * *]; and
- (b) “Adjusted Total turnover” and “relevant period” shall have the same meaning as assigned to them in sub-rule (4).

90. Acknowledgement.— (1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in Form GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of Section 54 shall be counted from such date of filing.

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rules (2), (3) and (4) of Rule 89, an acknowledgement in Form GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of Section 54 shall be counted from such date of filing.

(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in Form GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies:

Provided that the time period, from the date of filing of the refund claim in Form GST RFD-01 till the date of communication of the deficiencies in Form GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

(4) Where deficiencies have been communicated in Form GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

(5) The applicant may, at any time before issuance of provisional refund sanction order in Form GST RFD-04 or final refund sanction order in Form GST RFD-06 or payment order in Form GST RFD-05 or refund withhold order in Form GST RFD-07 or notice in Form GST RFD-08, in respect of any refund application filed in Form GST RFD-01, withdraw the said application for refund by filing an application in Form GST RFD-01W.

(6) On submission of application for withdrawal of refund in Form GST RFD-01W, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in Form GST RFD-01, shall be credited back to the ledger from which such debit was made.

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92. Order sanctioning refund.— (1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of Section 54 is due and payable to the applicant, he shall make an order in Form GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning

therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of Section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable.

[* * *]

(1-A) Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of Section 54 of the Act is due and payable to the applicant, he shall make an order in Form RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue Form GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.

(2) Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of sub-section (10) or, as the case may be, sub-section (11) of Section 54, he shall pass an order in ³⁴⁴[Part A] of Form GST RFD-07 informing him the reasons for withholding of such refund:

Provided that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of Form GST RFD-07.

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in Form GST RFD-08 to the applicant, requiring him to furnish a reply in Form GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in Form GST RFD-06

sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

(4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (1-A) or sub-rule (2) is payable to the applicant under sub-section (8) of Section 54, he shall make an order in Form GST RFD-06 and issue a payment order in Form GST RFD-05 for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice:

Provided that the order issued in **FORM GST RFD-06** shall not be required to be revalidated by the proper officer:

Provided further that the payment order in **FORM GST RFD-05** shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.

(4-A) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (4).

(5) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (1-A)] or sub-rule (2) is not payable to the applicant under sub-section (8) of Section 54, he shall make an order in Form GST RFD-06 and issue a payment order in Form GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.

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142. Notice and order for demand of amounts payable under the Act.— (1) The proper officer shall serve, along with the

- (a) notice issued under Section 52 or Section 73 or Section 74 [or Section 74-A] or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130, a summary thereof electronically in **FORM GST DRC-01,**
- (b) statement under sub-section (3) of Section 73 or sub-section (3) of Section 74 [or sub-section (3) of Section 74-A], a summary thereof electronically in **FORM GST DRC-02,** specifying therein the details of the amount payable.

(1-A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74 or sub-section (1) of Section 74-A, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01-A.**

(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 or clause (i) of sub-section (8) of Section 74-A, 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 74-A, or where any person makes payment of tax, interest, 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 (1-A), he shall inform the proper officer of such payment in FORM GST DRC-03 and an acknowledgement, in FORM GST DRC-04 shall be made available to the person through the common portal electronically.

(2-A) Where the person referred to in sub-rule (1-A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B of FORM GST DRC-01-A** [and thereafter the proper officer may issue an intimation in

Part-C of FORM GST DRC-01A, accepting the payment or the submissions or both, as the case may be, made by the said person.

(2-B) Where an amount of tax, interest, penalty or any other amount payable by a person under Section 52 or Section 73 or Section 74 or Section 74-A or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130, has been paid by the said person through an intimation in FORM GST DRC-03 under sub-rule (2), instead of crediting the said amount in the electronic liability register in FORM GST PMT-01 against the debit entry created for the said demand, the said person may file an application in FORM GST DRC-03A electronically on the common portal, and the amount so paid and intimated through FORM GST DRC-03 shall be credited in Electronic Liability Register in FORM GST PMT-01 against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC-03:

Provided that where an order in FORM GST DRC-05 has been issued in terms of sub-rule (3) concluding the proceedings, in respect of the payment of an amount in FORM GST DRC-03, an application in FORM GST DRC-03A cannot be filed by the said person in respect of the said payment.

(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of Section 73 or under clause (ii) of sub-section (8) of Section 74-A, as the case may be, or tax, interest and penalty under sub-section (8) of Section 74 or under clause (ii) of sub-section (9) of Section 74-A, as the case may be, within the period specified therein, or where the person concerned makes payment of the amount referred to in sub-section (1) of Section 129 within seven days of the notice issued under sub-section (3) of that section but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an intimation in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of Section 73 or sub-section (9) of Section 74 or sub-section (6) of

Section 74-A or sub-section (3) of Section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in **FORM GST DRC-01** under sub-rule (1) shall be furnished in FORM GST DRC-06.

(5) A summary of the order issued under Section 52 or Section 62 or Section 63 or Section 64 or Section 73 or Section 74 or Section 74-A or sub-section (12) of Section 75 or Section 75 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of Section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08**.

(Emphasis supplied)

Section 74 of the CGST Act enumerates the procedure for recovery of improperly paid tax. As per Section 74(1), the proper officer shall issue a show-cause notice to the assessee for payment along with interest under Section 50, where it appears to the proper officer that tax has not been paid properly or input tax credit has been wrongly availed. However, in terms of Section 74(5), the assessee may, before the service of notice under Section 74(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. As per Rule 142(2) of the CGST Rules, where payment of tax is made under Section 74(5) of the CGST Act, the assessee shall inform the proper officer of such payment in Form GST DRC-03, and an acknowledgement in Form GST DRC-04 shall be made available to the assessee through the common portal electronically. The procedure for refund in terms of Section 54(1) of the CGST Act would begin with a limitation of 2 years from the relevant date. Rule 89 of the CGST Rules, mandates that refund can be claimed in Form GST, RFD-01. Rule 89(2) stipulates complete documentation to be submitted along with the application. Rule 92(1) holds that where the proper officer is satisfied that a refund is payable in terms of Section 54(5) of the CGST Act, the proper officer shall issue refund in terms of form RFD-06. The said procedure has been considered as to how the refund application should be processed, by the High Court of Delhi in **AB ENTERPRISES V.**

COMMISSIONER OF DELHI GOODS AND SERVICES TAX¹

wherein it is held as follows:

" "

8. It is important to note that the implication of the impugned communication is that the petitioner would be required to file a fresh application for refund in terms of Rule 90(3) of the CGST Rules. Indisputably, the petitioner's application for refund cannot be termed as deficient if it is in accordance with Rule 89(2) of the CGST Rules and is accompanied with the documents specified therein. Although, the concerned officer is at liberty to call for further documents to process the claim, the fact that such further documents are not annexed with the application does not render the same deficient.

9. Mr. Aggarwal, does not controvert that the documents referred to in the file noting and also reflected in the GST portal are not covered under Rule 89(2) of the CGST Rules. Concededly, the petitioner had filed all relevant documents that were mandatory in terms of Rule 89(2) of the CGST Rules.

10. This Court had considered a similar issue in *National Internet Exchange of India v. Union of India*: Neutral Citation No. 2023:DHC:6002-DB and held as under:

"19. An application can be rejected as deficient only where any deficiencies are noted. The contextual reading of Sub-rule (3) with Sub-rule (2) of Rule 90 of the CGST Rules, indicates that the deficiencies referred to in Sub-rule (2) of Rule 90 of the CGST Rules are those that render an application incomplete in terms of Sub-rules (2), (3) and (4) of Rule 89 as stipulated in Sub-rule (2) of Rule 90. Thus, if an application is complete in terms of Sub-rule (2), (3) and (4) of Rule 89 of the CGST Rules, the same cannot be rejected, relegating the taxpayer to file afresh. In any view of the matter, the period of processing the said application under Sub-section (7)

¹ 2023 SCC Online Del 7434

of Section 54 of the CGST Act, is required to be counted from the said date.

20. However, notwithstanding the fact that the application for refund is complete inasmuch as it is accompanied by the documents as specified in Sub-rule (2) of Rule 89 of the CGST Rules, the proper officer may withhold the processing of refund, if he is not completely satisfied that the same is refundable to the taxpayer. In such circumstances, where the proper officer requires to further verify the claim or is unable to process it on account of discrepancies noticed by him, he is required to issue notice in Form GST RFD-08 in terms of Sub-rule (5) of Rule 90 of the CGST Rules."

11. In view of the above, we set aside the impugned communication. We direct the concerned officer to issue the acknowledgement in terms of Rule 90 of the CGST Rules and process the petitioner's application for refund in accordance with law."

(Emphasis supplied)

The High Court of Delhi holds that a refund application can be rejected only if the application is incomplete or deficient and the proper officer is required to issue a deficiency memo only then. In the light of the said judgment of the High Court of Delhi which delineates the procedure, the case at hand requires consideration.

9. The applications submitted by the petitioner seeking refund under Section 54 of the CGST Act is as follows:

"Refund ARN Receipt

This is an application receipt for Refund application GST RFD-01 filed by you at the common portal:

Application Reference Number (ARN):	AA290525020550H
Date of Application:	09/05/2025
Time of Filing of Application:	12:35 PM
GSTIN/ UIN/ Temporary ID:	29AAHCG3230C1ZZ
Trade Name:	GUNNAM INFRA PROJECTS PRIVATE LIMITED
Legal Name:	GUNNAM INFRA PROJECTS PRIVATE LIMITED
Reason of Refund:	Any other (specify)
Center Jurisdiction:	State-CBIC,Zone- BENGALURU, Commissionerate- BENGALURU EAST, Division – EAST DIVISION-8, Range- RANGE-BEDB (Jurisdictional Office)
State Jurisdiction:	State – Karnataka, Division – DGSTO-4, Bengaluru, LOCAL GST Office – LGSTO 015 - Bengaluru
From Period:	NA
To Period:	NA

Refund Specification

Registered person has paid taxes under duress through cash and credit ledger during inspection proceedings vide DRC 03

Amount of Refund Claimed (In INR)

Particulars	Tax	Interest	Penalty	Fee	Others	Total
Integrated Tax	0	0	0	0	0	0
Central Tax	12200000	0	0	0	0	12200000
State/UT Tax	12000000	0	0	0	0	12000000

Cess	0	0	0	0	0	0
Total	24200000	0	0	0	0	24200000

Note. It is a system generated application receipt and does not require any signature. The Acknowledgement (RFD-02) shall be issued after verification of the completeness of the application by the Refund Processing Officer.

Refund ARN Receipt

This is an application receipt for Refund application GST RFD-01 filed by you at the common portal:

Application Reference Number (ARN):	AA290525041279Y
Date of Application:	16/05/2025
Time of Filing of Application:	01:42 PM
GSTIN/ UIN/ Temporary ID:	29AAHCG3230C1ZZ
Trade Name:	GUNNAM INFRA PROJECTS PRIVATE LIMITED
Legal Name:	GUNNAM INFRA PROJECTS PRIVATE LIMITED
Reason of Refund:	Any other (specify)
Center Jurisdiction:	State-CBIC, Zone- BENGALURU, Commissionerate- BENGALURU EAST, Division – EAST DIVISION-8, Range- RANGE-BEDB (Jurisdictional Office)
State Jurisdiction:	State – Karnataka, Division – DGSTO-4, Bengaluru, LOCAL GST Office – LGSTO 015 - Bengaluru
From Period:	NA
To Period:	NA

Refund Specification

Registered person has paid taxes under duress through cash and credit ledger during inspection proceedings vide DRC 03

Amount of Refund Claimed (In INR)

Particulars	Tax	Interest	Penalty	Fee	Others	Total
Integrated Tax	0	0	0	0	0	0
Central Tax	1593414	0	0	0	0	1593414
State/UT Tax	1793414	0	0	0	0	1793414
Cess	0	0	0	0	0	0
Total	3386828	0	0	0	0	3386828

Note. It is a system generated application receipt and does not require any signature. The Acknowledgement (RFD-02) shall be issued after verification of the completeness of the application by the Refund Processing Officer.

Refund ARN Receipt

This is an application receipt for Refund application GST RFD-01 filed by you at the common portal:

Application Reference Number (ARN):	AA290525041441D
Date of Application:	16/05/2025
Time of Filing of Application:	02:05 PM
GSTIN/ UIN/ Temporary ID:	29AAHCG3230C1ZZ
Trade Name:	GUNNAM INFRA PROJECTS PRIVATE LIMITED
Legal Name:	GUNNAM INFRA PROJECTS PRIVATE LIMITED
Reason of Refund:	Any other (specify)
Center Jurisdiction:	-
State Jurisdiction:	-
From Period:	NA
To Period:	NA

Refund Specification

Registered person has paid taxes under duress through credit ledger during inspection proceedings vide DRC 03

Amount of Refund Claimed (In INR)

Particulars	Tax	Interest	Penalty	Fee	Others	Total
Integrated Tax	1326070	0	0	0	0	1326070
Central Tax	0	0	0	0	0	0
State/UT Tax	0	0	0	0	0	0
Cess	0	0	0	0	0	0
Total	1326070	0	0	0	0	1326070

Note. It is a system generated application receipt and does not require any signature. The Acknowledgement (RFD-02) shall be issued after verification of the completeness of the application by the Refund Processing Officer.

Refund ARN Receipt

This is an application receipt for Refund application GST RFD-01 filed by you at the common portal:

Application Reference Number (ARN):	AA2905250413770
Date of Application:	16/05/2025
Time of Filing of Application:	01:53 PM
GSTIN/ UIN/ Temporary ID:	29AAHCG3230C1ZZ
Trade Name:	GUNNAM INFRA PROJECTS PRIVATE LIMITED
Legal Name:	GUNNAM INFRA PROJECTS PRIVATE LIMITED
Reason of Refund:	Any other (specify)
Center Jurisdiction:	-
State Jurisdiction:	-
From Period:	NA
To Period:	NA

Refund Specification

Registered person has paid taxes under duress through cash and credit ledger during inspection proceedings vide DRC 03

Amount of Refund Claimed (In INR)

Particulars	Tax	Interest	Penalty	Fee	Others	Total
Integrated Tax	2246400	0	0	0	0	2246400
Central Tax	0	0	0	0	0	0
State/UT Tax	0	0	0	0	0	0
Cess	0	0	0	0	0	0
Total	2246400	0	0	0	0	2246400

Note: It is a system generated application receipt and does not require any signature. The Acknowledgement (RFD-02) shall be issued after verification of the completeness of the application by the Refund Processing Officer.

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Certificate under Section 54 of the Central Goods and Services Tax Act, 2017 ("CGST Act") and Section 54 of the Karnataka Goods and Services Tax Act, 2017 ("KGST Act"), read along with Rule 89(2)tm) of the CORT and KGST Rules, 2017

This is to certify that in respect of the refund amounting to **Rs. 13,26,070/-** (Rupees Thirteen Lakhs Twenty-Six Thousand Seventy) as provided in Annexure A, claimed by M/s. Gunnam Infra Projects Pvt. Ltd. GSTIN: **29AAHCG3230C1ZZ** for the tax period FY: 2024-25, the incidence of tax, interest, and penalty has not been passed on to any other person. This certificate is based on the examination of the books of account and other relevant records and returns particulars maintained/furnished by the applicant.

*Note: The above payments are made from ~~cash~~/credit ledger through DRC03 in the common online portal of the Registered Person **and is not against** any tax liability on any supply under forward or reverse charge basis and this is retained as 'Receivable' in the books of accounts/Balance Sheet of the Registered Person*

for **JCSS & Co**
CHARTERED ACCOUNTANTS
(FIRM REGISTRATION NO: 009178S)

ICAI UDIN: 25205709BNFYGW6074

Place: Bangalore

Date: 30 Apr 2025

sd/-

A Jatin Christopher

MEMBERSHIP NO: 205 709

Encl: Annexure A.

JCSS & CO
CHARTERED ACCOUNTANTS

Annexure A:

Details of payment made claimed as refund:

Mode of payment	Date of payment	Cash/Credit Ledger Debit details	Amount in Rupees
Credit Ledger	29 May 2024	D12905240389940	13,26,070
Total			13,26,070

... ..

Certificate under Section 54 of the Central Goods and Services Tax Act, 2017 ("CGST Act") and Section 54 of the Karnataka Goods and Services Tax Act, 2017 ("KGST Act"), read along with Rule 89(2)(m) of the CGST and KGST Rules, 2017

This is to certify that in respect of the refund amounting to **Rs. 22,46,400/-** (Rupees Twenty-Two Lakhs Forty-Six Thousand Four Hundred) as provided in Annexure A, claimed by M/s. Gunnam Infra Projects Pvt. Ltd. GSTIN: **29AAHCG3230C1ZZ** for the tax period FY: 2023-24, the incidence of tax, interest, and penalty has not been passed on to any other person. This certificate is based on the

examination of the books of account and other relevant records and returns particulars maintained/furnished by the applicant.

Note: The above payments are made from cash and credit ledger through DRC03 in the common online portal of the Registered Person **and is not against** any tax liability on any supply under forward or reverse charge basis and this is retained as 'Receivable' in the books of accounts/Balance Sheet of the Registered Person.

for **JCSS & Co**
CHARTERED ACCOUNTANTS
(FIRM REGISTRATION NO: 009178S)

ICAI UDIN: 25205709BNFYGT2166

sd/-

Place: Bangalore
Date: 30 Apr 2025

A Jatin Christopher
MEMBERSHIP NO: 205 709

Encl: Annexure A.

JCSS & CO
CHARTERED ACCOUNTANTS

Annexure A:

Details of payment made claimed as refund:

Sl. No.	Mode of payment	Date of payment	Cash/Credit Ledger Debit details	Amount in Rupees
1	Credit Ledger	23 Jan 2024	DC2901240401129	10,21,057
2	Credit Ledger	23 Jan 2024	DI2901240427860	12,25,343
TOTAL				22,46,400

...

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Certificate under Section 54 of the Central Goods and Services Tax Act, 2017 ("CGST Act") and Section 54 of the Karnataka Goods and Services Tax Act, 2017 ("KGST

**Act"), read along with Rule 89(2)(m) of the CGST and
KGST Rules, 2017**

This is to certify that in respect of the refund amounting to **Rs. 33,86,828/-** (Rupees Thirty-Three Lakhs Eighty-Six Thousand Eight Hundred and Twenty-Eight) as provided in Annexure A, claimed by M/s. Gunnam Infra Projects Pvt. Ltd. GSTIN: **29AAHCG3230C1ZZ** for the tax period FY: 2023-24, the incidence of tax, interest, and penalty has not been passed on to any other person. This certificate is based on the examination of the books of account and other relevant records and returns particulars maintained/furnished by the applicant.

Note: The above payments are made from ~~cash~~ /credit ledger through DRC03 in the common online portal of the Registered Person **and is not against** any tax liability on any supply under forward or reverse charge basis and this is retained as 'Receivable' in the books of accounts/Balance Sheet of the Registered Person.

for **JCSS & Co**
CHARTERED ACCOUNTANTS
(FIRM REGISTRATION NO: 009178S)

ICAI UDIN: 25205709BNFYGU8570

sd/-

Place: Bangalore
Date: 30 Apr 2025

A Jatin Christopher
MEMBERSHIP NO: 205 709

Encl: Annexure A.

JCSS & CO
CHARTERED ACCOUNTANTS

Annexure A:

Details of payment made claimed as refund:

Mode of payment	Date of payment	Cash/Credit Ledger Debit details	Amount in Rupees
Credit Ledger	05 Jul 2023	D12907230006768	33,86,828
Total			33,86,828

Certificate under Section 54 of the Central Goods and Services Tax Act, 2017 ("CGST Act") and Section 54 of the Karnataka Goods and Services Tax Act, 2017 ("KGST Act"), read along with Rule 89(2)(m) of the CGST and KGST Rules, 2017

This is to certify that in respect of the refund amounting to **Rs. 2,42,00,000/-** (Rupees Two Crore Forty-Two Lakhs) as provided in Annexure A, claimed by M/s. Gunnam Infra Projects Pvt. Ltd. GSTIN: **29AAHCG3230C1ZZ** for the tax period FY: 2023-24, the incidence of tax, interest, and penalty has not been passed on to any other person. This certificate is based on the examination of the books of account and other relevant records and returns particulars maintained/furnished by the applicant

Note: The above payments are made from cash and credit ledger through DRC03 in the common online portal of the Registered Person **and is not against** any tax liability on any supply under forward or reverse charge basis and this is retained as 'Receivable' in the books of accounts/Balance Sheet of the Registered Person.

for **JCSS & Co**
CHARTERED ACCOUNTANTS
(FIRM REGISTRATION NO: 009178S)

ICAI UDIN: 25205709BNFYGV8356

sd/-

Place: Bangalore
Date: 30 Apr 2025

A Jatin Christopher
MEMBERSHIP NO: 205 709

Encl: Annexure A.

**JCSS & CO
CHARTERED ACCOUNTANTS**

Annexure A:

Details of payment made claimed as refund:

Sl. No.	Mode of payment	Date of payment	Cash/Credit Ledger Debit details	Amount in Rupees
1	Credit Ledger	08 Jun 2023	DC2906230027610	2,40,00,000
2	Credit Ledger	08 Jun 2023	DI2906230014324	2,00,000
TOTAL				2,42,00,000

....

....

....

Date: 30.04.2025

UNDERTAKING

I Shri. Sai Tejaswin Reddy Gunnamreddy in my capacity as Director of **M/s.Gunnam Infra Projects Pvt. Ltd** do hereby undertake to return to the Government the amount of refund sanctioned along with interest in case it is found that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the Central GST Act and Karnataka GST Act made applicable to the Integrated GST Act and Compensation Cess Act, have not been complied with in respect of the amount refunded for the payments made on 05 Jul 2023 through Cash and Credit ledger to the extent of **Rs.33,86,828/-**.

for M/s. Gunnam Infra Projects Pvt. Ltd.

For GUNNAM INFRA PROJECTS PVT.

Sd/-
Director

.....
Shri. Sai Tejaswin Reddy G

(Director)
No 2/19/6, Near Mulberry Woods Apt,

Carmelaram Station Road
Doddakannelli, Bangalore 560 035
GSTIN: 29AAHCG3230C1ZZ

....

....

....

Date: 30.04.2025

UNDERTAKING

I Shri. Sai Tejaswin Reddy Gunnamreddy in my capacity as Director of **M/s. Gunnam Infra Projects Pvt. Ltd** do hereby undertake to return to the Government the amount of refund sanctioned along with interest in case it is found that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the Central GST Act and Karnataka GST Act made applicable to the Integrated GST Act and Compensation Cess Act, have not been complied with in respect of the amount refunded for the payments made on 29 May 2024 through Credit ledger to the extent of **Rs.13,26,070/-**

for M/s. Gunnam Infra Projects Pvt. Ltd.

For GUNNAM INFRA PROJECTS PVT.

Sd/-
Director

.....
Shri. Sai Tejaswin Reddy G

(Director)

No 2/19/6, Near Mulberry Woods Apt,
Carmelaram Station Road
Doddakannelli, Bangalore 560 035
GSTIN: 29AAHCG3230C1ZZ

...

....

...

Date: 30.04.2025

UNDERTAKING

I Shri. Sai Tejaswin Reddy Gunnamreddy in my capacity as Director of **M/s. Gunnam Infra Projects Pvt. Ltd** do hereby undertake to return to the Government the amount of refund sanctioned along with interest in case it is found that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the Central GST Act and Karnataka GST Act made applicable to the Integrated GST Act and Compensation Cess Act, have not been complied with in respect of the amount refunded for the payments made on 23 Jan 2024 through Cash and Credit ledger to the extent of **Rs.22,46,400/-**.

for **M/s. Gunnam Infra Projects Pvt. Ltd.**

For GUNNAM INFRA PROJECTS PVT.

Sd/-
Director

.....
Shri. Sai Tejaswin Reddy G

(Director)

No 2/19/6, Near Mulberry Woods Apt,
Carmelaram Station Road
Doddakannelli, Bangalore 560 035
GSTIN: 29AAHCG3230C1ZZ

...

...

...

Date: 30.04.2025

UNDERTAKING

I Shri. Sai Tejaswin Reddy Gunnamreddy in my capacity as Director of **M/s. Gunnam Infra Projects Pvt. Ltd** do hereby undertake to return to the Government the amount of refund sanctioned along with interest in case it is found that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the Central GST Act and Karnataka GST Act made applicable to

the Integrated GST Act and Compensation Cess Act, have not been complied with in respect of the amount refunded for the payments made on 08 Jun 2023 through Cash and Credit ledger to the extent of **Rs.2,42,00,000/-**.

for **M/s. Gunnam Infra Projects Pvt. Ltd.**

For GUNNAM INFRA PROJECTS PVT.

Sd/-
Director

.....
Shri. Sai Tejaswin Reddy G

(Director)

No 2/19/6, Near Mulberry Woods Apt,
Carmelaram Station Road
Doddakannelli, Bangalore 560 035
GSTIN: 29AAHCG3230C1ZZ"

The aforesaid are the applications under Section 54 of the CGST Act submitted by the petitioner seeking refund. They are in tune with what is necessary. All the documents as is considered by the High Court of Delhi are placed on record by the petitioner. Therefore, the applications ought to have merited appropriate consideration at the hands of the respondents.

10. The next question would be, whether payments made at the time of search can become the subject matter of refund under

Section 54 of the CGST Act. The payments are admittedly made under Section 74(5) of the CGST Act at the time of search. The interpretation of whether payment made during search proceedings may be considered voluntary Section 74(5) of the CGST Act need not detain this Court for long or delve deep into the matter.

10.1. The Apex Court in the judgment rendered in the case of **RADHIKA AGARWAL v. UNION OF INDIA**² has held as follows:

"....

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.

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

² (2025) 6 SCC 545

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.

***"

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					
<i>Period</i>	<i>Formation</i>	<i>No. of cases</i>	<i>Detection</i> (In Rs Cr)	<i>Recovery</i> (In Rs Cr)	<i>No. of arrest</i>
2017-18 w.e.f. July 2017	CGST Zones	273	384	224	3
	DGGI	151	832	171	0
	<i>Total</i>	<i>424</i>	<i>1216</i>	<i>394</i>	<i>3</i>
2018-19	CGST Zones	5894	18,658	10,338	115
	DGGI	1474	19,288	8878	76
	<i>Total</i>	<i>7368</i>	<i>37,946</i>	<i>19,216</i>	<i>191</i>
2019-20	CGST Zones	8367	19,482	6956	123
	DGGI	2290	21,371	11,508	108
	<i>Total</i>	<i>10,657</i>	<i>40,853</i>	<i>18,464</i>	<i>231</i>
2020-21	CGST Zones	8756	18,247	3380	224

	DGGI	3840	31,137	8855	236
	<i>Total</i>	<i>12,596</i>	<i>49,384</i>	<i>12,235</i>	<i>460</i>
2021-22	CGST Zones	8770	24,757	5393	191
	DGGI	3804	48,481	19,764	151
	<i>Total</i>	<i>12,574</i>	<i>73,238</i>	<i>25,157</i>	<i>342</i>
2022-23	CGST Zones	10,500	31,053	12,509	93
	DGGI	5062	1,00,560	20,717	97
	<i>Total</i>	<i>15,562</i>	<i>1,31,613</i>	<i>33,226</i>	<i>190</i>
2023-24 (up to March 2024)	CGST Zones	14,492	35,377	7742	84
	DGGI	6090	1,94,955	24,016	139
	<i>Total</i>	<i>20,582</i>	<i>2,30,332</i>	<i>31,758</i>	<i>223</i>
Total Number of ITC Fraud Cases					
Period: July 2017 to March 2024					
<i>Period</i>	<i>Formation</i>	<i>No. of cases</i>	<i>Detection (In Rs Cr)</i>	<i>Recovery (In Rs Cr)</i>	<i>No. of arrest</i>
2017-18 w.e.f. July 2017	CGST Zones	5	13	12	2
	DGGI	0	0	0	0
	<i>Total</i>	<i>5</i>	<i>13</i>	<i>12</i>	<i>2</i>
2018-19	CGST Zones	1221	7993	676	97
	DGGI	399	3258	510	57
	<i>Total</i>	<i>1620</i>	<i>11,251</i>	<i>1186</i>	<i>154</i>
2019-20	CGST Zones	3231	12,003	1086	100
	DGGI	1027	7929	1331	95
	<i>Total</i>	<i>4258</i>	<i>19,932</i>	<i>2417</i>	<i>195</i>
2020-21	CGST Zones	5292	13,502	743	202
	DGGI	1976	17,731	1489	227
	<i>Total</i>	<i>7268</i>	<i>31,233</i>	<i>2232</i>	<i>429</i>
2021-22	CGST Zones	4636	14,895	825	178
	DGGI	1330	13,127	1202	114
	<i>Total</i>	<i>5966</i>	<i>28,022</i>	<i>2027</i>	<i>292</i>
2022-23	CGST Zones	5291	10,965	887	85
	DGGI	1940	13,175	1597	68
	<i>Total</i>	<i>7231</i>	<i>24,140</i>	<i>2484</i>	<i>153</i>
2023-24 (up to March 2024)	CGST Zones	6993	15,374	836	69
	DGGI	2197	21,000	2577	113
	<i>Total</i>	<i>9190</i>	<i>36,374</i>	<i>3413</i>	<i>182</i>

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."

(Emphasis supplied)

10.2. Long before the Apex Court rendering the said judgment, different High Courts have considered this issue. A Division Bench of the High Court of Gujarat in the case of **BHUMI ASSOCIATE v. UNION OF INDIA**³, has held as follows:

"....

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.

³ 2021 SCC OnLine Guj 3016

"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."

(Emphasis supplied)

10.3. A Division Bench of the High Court of Delhi in the case of **VALLABH TEXTILES v. SENIOR INTELLIGENCE OFFICER⁴**, has held as follows:

"....

⁴ 2022 SCC OnLine Del 4508

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 February 16, 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."

(Emphasis supplied)

10.4. A Division Bench of this Court in **UNION OF INDIA v. BUNDL TECHNOLOGIES PRIVATE LIMITED⁵**, has held as follows:

"....

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 the CGST Act ?

⁵ 2022 SCC OnLine Kar 565

(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 wilful misstatement or suppression of facts. The relevant extract of section 74 reads as under :

"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.—(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.. ..

(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 per cent. 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 the Gujarat High Court in Bhumi Associate v. 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 4 a.m. and 1 p.m. on December 30, 2019 and December 27, 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 November 30, 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 November 30, 2019 reads as under :

Bundl Technologies Private Limited

Registered Office, 4th Floor, Annex Building, Maruthi Chambers, Survey No. 17/9B, Begur Hobli, Roopana Agrahara. Bengaluru, Karnataka India 560 068 CIN: J74110KA2013PTC096530

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-500 016.

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 bona fide, 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 December 2, 2019, the relevant portion of which is reproduced below :

Form GST DRC-03

[See rule 142(2) and 142(3)]

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

ARN : AD291219000080K Date : 2-12-2019

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.

(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 under section 67(1) of the 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 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. v. Union of India (2009) 237 ELT 35 (Bom) it was held by Division Bench of the 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 the Delhi High Court in MakeMyTrip (India) Pvt. Ltd. v. Union of India [2016] 96 VST 37 (Delhi) ; (2016) 44 STR 481 (Delhi) and it was held that amount collected during investigation proceeding without any adjudication is liable to be refunded. In Century Knitters (India) Ltd. v. Union of India [2014] 24 GSTR 12 (P&H) ; (2013) 293 ELT 504 (P&H) it was held that any amount illegally collected cannot 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 v. 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 November 28, 2019 at 10.30 a.m. in exercise of powers under section 67(1) of the CGST Act. On November 30, 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.

...

...

...

30. In the backdrop of well settled legal principles and the statutory provision we may advert to the facts of case in hand. The company deposited a sum of Rs. 15 crores at about 4.00 a.m. on November 30, 2019 and a sum of Rs. 12,51,44,157 on December 27, 2019. The company filed an application seeking refund on September 29, 2020. Thereafter the company filed an application seeking refund on December 16, 2020 on December 16, 2020 before jurisdictional GST authority. The company requested the Department to refund the amount. When the attempts of the company to seek refund did not yield any result, the writ petition was filed on February 25, 2021. Section 54 of the CGST Act provides for a time-limit of two years to claim refund. The company not only filed the claim for refund within two years but the writ petition as well. No rights have accrued to the department, as the claim for refund made by the company is well within time. Therefore in the light of legal principles referred to in the preceding paragraph, it can not be said that there was any delay or laches in filing writ petition. Therefore the fourth issue is answered by stating that there is no delay or laches in filing the writ petition.

31. The submission by the company that Green Finch is neither a non-existent entity nor that the company has rightly availed input-tax credit is concerned need not be adverted to in this proceeding, as the same is pending investigation. **Article 265 of the Constitution mandates that collection of tax has to be by the authority of law. If tax is collected without any authority of law, the same would amount to depriving a person of his property without any authority of law and would infringe his right under article 300A of the Constitution of India as well. In the instant case, the only provision which permits deposit of an amount during pendency of an investigation is section 74(5) of the CGST Act, which is not attracted in the fact situation of the case. Therefore, it is evident that amount has been collected from company in violation of articles 265 and 300A of the Constitution. Therefore, the contention of the Department that amount under deposit be made subject to the outcome of the pending investigation can not be accepted. The Department, therefore, is liable to refund the amount to the company.**

(Emphasis supplied)

10.5. Another Division Bench of this Court in the case of **INTELLIGENCE OFFICER, DIRECTORATE GENERAL OF GST INTELLIGENCE, BENGALURU v. KESAR COLOR CHEM INDUSTRIES⁶**, has held as follows:

"....

27. Having heard the learned counsel for the parties and perused the record, the learned single judge [*Kesar Colour Chem Industries v. Intelligence Officer*, (2025) 145 GSTR 265 (Karn).] has allowed the writ petition on a finding that the deposit of the amount of Rs. 1,00,00,000 on July 31, 2021 and Rs. 1,50,00,000 on August 3, 2021

⁶ 2025 SCC OnLine Kar 18697

cannot be treated as a self-ascertainment as the element of voluntariness is absent. According to the learned single judge [*Kesar Colour Chem Industries v. Intelligence Officer*, (2025) 145 GSTR 265 (Karn).] , 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 July 31, 2021 after the Officers of the appellants visited the office of the respondent at 10:30 a.m. on July 29, 2021 and continued to be in the office till 23:30 p.m. on July 30, 2021 and thereafter, also served summons for appearance of the proprietor at Bengaluru on August 2, 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 August 3, 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 July 31, 2021 and the same was after he was issued summons for appearance in Bengaluru on August 2, 2021 (appeared on August 3, 2021). So in that sense, there was likelihood that he may be arrested at Bengaluru if he does not deposit the money in writ large. Similarly, second payment was made on August 3, 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 [*Kesar Colour Chem Industries v. Intelligence Officer*, (2025) 145 GSTR 265 (Karn).] that the same was not voluntary, with which we agree.

31. Having said that, insofar as the affidavit dated August 10, 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 August 10, 2024, i.e., one week after the statement dated August 3, 2024 was made. One week is not a large period to be considered as fatal/belated. The learned counsel for the respondent is justified in relying upon the judgment of the Delhi High Court in the case of *Lovelesh Singhal* [*Lovelesh Singhal v. Commissioner, Delhi Goods and Services Tax*, (2024) 121 GSTR 422 (Delhi); (2023) 7 HCC (Del) 237.] , wherein the Delhi High Court has, in paragraph Nos. 21 to 24, 28 to 32, 35 and 36, held as under (pages 430-434 in 121 GSTR):

"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 2:30 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....

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....

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 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..."

32. 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 [*Kesar Colour Chem Industries v. Intelligence Officer*, (2025) 145 GSTR 265 (Karn).] is right in coming to a conclusion in paragraph Nos. 24 and 28 of the impugned order which we have reproduced above that the payments were recovery and were contrary to law.

(Emphasis supplied)

10.6. A coordinate bench of this Court in the judgment rendered in the case of **J. RAMESH CHAND V. UNION OF INDIA**⁷ has held as follows:

"25. In the instant case, the material on record discloses that on 23.03.2023, the 3rd 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

⁷ W.P.No.9890 of 2023 disposed on 13.10.2025

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....."

(Emphasis supplied)

In the light of the judgments rendered by the Apex Court and different High Courts, what would unmistakably emerge is, that the

payments made by the petitioner cannot be construed as voluntary under Section 74(5) of the CGST Act. Therefore, the petitioner is entitled for refund of the payments made in form DRC-03. If the refund applications and the documents appended to it are in appropriate format, such applications cannot be denied on the score that there are no supporting documents attached. Both the issues standing completely answered by the Apex Court and different High Courts, the petition deserves to succeed, with a direction to the respondents to process the applications for refund and pass necessary orders thereon, in accordance with law.

11. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) The impugned Deficiency Memos dated 20-05-2025 and 21-05-2025 issued by the 6th respondent stand quashed.

- (iii) Petitioner becomes entitled to the consequential relief that would flow from the quashment of the Deficiency Memos.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

bkp
CT:MJ