

Payment under investigation may not always amount to admission of liability and hence eligible for refund – Karnataka High Court

17 March 2022



Summary

The Karnataka High Court (HC) held that the assessee is entitled to refund of INR 27.5 crore of GST which was collected unconstitutionally during pendency of an investigation. HC observed that the payment made by the company was not an admission of liability but only amount deposited for investigation proceedings. Hence such tax collection by Revenue cannot be treated within the authority of law and would amount to violation of Right to Property. Accordingly, the company was liable to a refund of the amount deposited.

Facts of the case

- The Respondent¹ is a company operating the e-commerce platform named 'Swiggy' providing food delivery service to the customers from their nearby restaurants. They had entered into an agreement with a third party² as their temporary delivery executive (Temp DE) to provide delivery service during the rush hours.
- The department initiated an investigation against the assessee alleging that the third party is a non-existing entity and thus, the Input Tax Credit (ITC) availed by assessee is fraudulent.
- The assessee submitted that the amount collected during investigation was under threat and coercion without following the procedures prescribed.
- Further, assessee contended that he is entitled to avail the refund of the amount deposited by him as it was not paid against the liability but only under threat and coercion.
- In the previous writ petition filed before the Karnataka HC, it was held that amount paid during investigation was involuntary.
- The present writ petition³ is filed by the Revenue Department praying that it was a voluntary act done on the part of assessee.

Karnataka HC observations and ruling⁴:

- **Involuntary payment of tax:** It was observed that neither there was any material on record to indicate that the amounts were paid on admission of liability by company nor did the company communicate to proper officer regarding ascertainment of liability. The provision⁵ requires written communication about either ascertainment or admission which were absent in the instant case.
- **Reservation of right to refund:** It is evident that payments have not been made admitting the liability. Therefore, the assessee reserved its right to seek refund at appropriate time. Assessee clarified that the payments shall be treated as deposits and shall not be regarded as admission of liability.
- **Extension of threat is a question of fact:** Court placed reliance on decisions⁶ of HC where it was held that amount paid during investigation is liable to be refunded. The company was regular in paying tax and filing returns, thus, nothing indicated that any amount was due to the department. Therefore, though the amounts were paid involuntarily, nothing indicated extension of threat of arrest to officers of company.

¹ Bundl Technologies Pvt. Ltd

² Green Finch Team Management Ltd.

³ W.A.No. 4467 of 2021 (T-RES)

⁴ Order dated 3 March 2022

⁵ Section 74(5) of CGST Act, 2017

⁶ Vodafone Essar south vs Union of India;

Makemytrip India Pvt Ltd vs Union of India; Century Knitters India Ltd vs Union of India; Concepts Global Impex vs Union of India

- **Manner of conducting investigation:** The provisions⁷ relating to inspection, search and seizure were invoked by the officers and summons⁸ were issued demanding evidence from company. The company has neither attributed any specific role to officers nor impleaded them in the petition. Thus, the contention that during investigation the officers acted in a high handed and arbitrary manner is also a question of fact.
- **No delay or laches in filing petition:** As per provisions⁹, application seeking refund of any tax and interest shall be filed within a period of two years. The company had filed the claim as well as writ petition within two years. Therefore, refund claim was made well within time with no delay or laches in filing appeal.
- **Infringement of Right to Property:** The Indian Constitution¹⁰ mandates collection of tax by authority of law. When such is collected without the authority of law, then it amounts to depriving a person of his property and causes infringement of his Right to property¹¹. In the present case, it is evident that the amount has been

collected in violation of the constitution. Accordingly, the company is liable to claim the refund of the tax paid.

Our comments

The High Court has directed a refund of the amount deposited during investigation proceedings on grounds that such payment was not made on a voluntary basis.

This ruling is in line with an earlier decision of the Bombay High Court in the case of Vodafone Essar South wherein it was held that assessee cannot be forced to pay tax during investigation and without adjudication of his liability.

It would be interesting to see how the other taxpayers whose huge sum would have been deposited involuntarily during investigations would also consider filing of refund applications.

⁷ Section 67(1)

⁸ Under section 70

⁹ Section 54

¹⁰ Article 265

¹¹ Article 300A

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