

## 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 Respondent<sup>1</sup> 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 party<sup>2</sup> 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 petition<sup>3</sup> is filed by the Revenue Department praying that it was a voluntary act done on the part of assessee.

## Karnataka HC observations and ruling<sup>4</sup>:

- **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 provision<sup>5</sup> 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 decisions<sup>6</sup> 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.

<sup>1</sup> Bundl Technologies Pvt. Ltd

<sup>2</sup> Green Finch Team Management Ltd.

<sup>3</sup> W.A.No. 4467 of 2021 (T-RES)

<sup>4</sup> Order dated 3 March 2022

<sup>5</sup> Section 74(5) of CGST Act, 2017

<sup>6</sup> 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 provisions<sup>7</sup> relating to inspection, search and seizure were invoked by the officers and summons<sup>8</sup> 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 provisions<sup>9</sup>, 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 Constitution<sup>10</sup> 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 property<sup>11</sup>. 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.

---

<sup>7</sup> Section 67(1)

<sup>8</sup> Under section 70

<sup>9</sup> Section 54

<sup>10</sup> Article 265

<sup>11</sup> Article 300A

# Contact us

To know more, please visit [www.grantthornton.in](http://www.grantthornton.in) or contact any of our offices as mentioned below:

---

<b>NEW DELHI</b> National Office, Outer Circle, L 41, Connaught Circus, New Delhi - 110001 T +91 11 4278 7070	<b>NEW DELHI</b> 6th Floor, Worldmark 2, Aerocity, New Delhi - 110037 T +91 11 4952 7400	<b>BENGALURU</b> 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, CV Raman Nagar, Bengaluru - 560093 T+91 80 4243 0700	<b>CHANDIGARH</b> B-406A, 4th Floor, L&T Elante Office Building, Industrial Area Phase I, Chandigarh - 160002 T +91 172 4338 000	<b>CHENNAI</b> 9th Floor, A Wing, Prestige Polygon, 471 Anna Salai, Mylapore Division, Teynampet, Chennai – 600035 T +91 44 4294 0000
<b>DEHRADUN</b> Suite No 2211, 2nd Floor, Building 2000, Michigan Avenue, Doon Express Business Park, Subhash Nagar, Dehradun - 248002 T +91 135 2646 500	<b>GURGAON</b> 21st Floor, DLF Square, Jacaranda Marg, DLF Phase II, Gurgaon - 122002 T +91 124 462 8000	<b>HYDERABAD</b> 7th Floor, Block III, White House, Kundan Bagh, Begumpet, Hyderabad - 500016 T +91 40 6630 8200	<b>KOCHI</b> 6th Floor, Modayil Centre Point, Warriam Road Junction, MG Road Kochi - 682016 T +91 484 406 4541	<b>KOLKATA</b> 10C Hungerford Street, 5th Floor, Kolkata - 700017 T +91 33 4050 8000
<b>MUMBAI</b> 11th Floor, Tower II, One International Center, SB Marg Prabhadevi (W), Mumbai - 400013 T +91 22 6626 2600	<b>MUMBAI</b> Kaledonia, 1st Floor, C Wing, (Opposite J&J Office), Sahar Road, Andheri East, Mumbai - 400069 T +91 22 6176 7800	<b>NOIDA</b> Plot No 19A, 2nd Floor, Sector - 16A, Noida - 201301 T +91 120 485 5900	<b>PUNE</b> 3rd Floor, Unit No 309-312, West Wing, Nyati Unitree, Nagar Road, Yerwada Pune - 411006 T +91 20 6744 8800	

---

For more information or for any queries, write to us at [gtbharat@in.gt.com](mailto:gtbharat@in.gt.com)



Follow us @GrantThorntonIN

© 2022 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001. References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.