Voluntary Payment of Tax?

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By Vijay Kumar

IN my column, DDT 590 11.04.2007, I observed,

> Audacious Audit parties and pestering preventive parties should think twice before forcing the assessees to make voluntary payment of duties which they are not required to pay. Rather their bosses should be more careful. This may not be a worthwhile exercise as, when the department ultimately loses the case, the voluntary payment along with interest has to be returned and there is the risk of the Finance Minister being told by the courts about the lethargic and adamant attitude which causes considerable loss to Revenue.

In DDT 1671 11.08.2011, I had observed,

> When the Customs and Central Excise officers raid you, they normally force you to make a ***voluntary*** statement and also make a ***voluntary*** payment of duty much before issue of a notice. One should be very careful before giving such voluntary statements and making voluntary payments. Both the statement and the voluntary payment will be used by the Department against the assessee in proving evasion.

In ***Ebiz Com Pvt Ltd Vs Union of India*** - **2016-TIOL-1958-HC-DEL-ST**, the Delhi High Court observed,

> 74. In the circumstances outlined earlier, when the MD of a company is in judicial custody, the offer made to pay the alleged arrears of service tax dues of such company even without an SCN can hardly be characterised as 'voluntary'. The loss of liberty, and more disconcertingly, the loss of reputation, is bound to compel even the most rational person to succumb to the extreme pressure that such circumstance subjects him to.

And today, I bring to you another story of ***voluntary payment*** .

A search was conducted between 16.02.2022 and 17.02.2022 and panchnama was drawn on 17.02.2022, which bears the signatures of two persons who the revenue claims, were independent witnesses to the search proceedings.

Even while the search was going on, the taxpayer had a brilliant revelation and he ***voluntarily*** paid a tax of over Rs. 1.8 crores during the night.

But in the high court, the petitioner submitted:

> 1. The deposit of Rs.1,80,10,000/- was not voluntary.
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> 2. The statements and documents, on which the signatures were obtained on 17.02.2022 and 24.02.2022, were under coercion.

3. When the search was carried out, CCTV cameras were switched off. The enquiry on 24.02.2022 was not backed by camera recording.

4. The so-called independent witnesses were connected to the revenue. One was a computer operator, working in tandem with the officials, while the other was seen driving the vehicle of one of the officers in the search party.

5. There was no notice issued by the proper officer, ascertaining the tax, interest and penalty payable by the petitioner-concern, as envisaged under sub-rule (1A) of Rule 142; and if it is to be assumed, for the sake of argument, that the petitioner-concern's representative made an ascertainment on his own concerning tax, interest and penalty that was required to be paid, upon payment being made, the proper officer was obliged in law to issue an acknowledgement qua the same in the prescribed form as stipulated in sub-rule (2) of that very rule i.e., Rule 142.

6. The deposit, if construed as having been preceded by self-ascertainment, a show-cause notice cannot possibly be issued.

7. In the circumstances in which the amount was deposited, the fact, that there was coercion, is revealed by the flagrant violation of safeguards provided in law.

8. When the assessee presented himself before the officer on 24.02.2022, pursuant to the summons dated 22.02.2022, he was detained for several hours, and was allowed to leave only after he had appended his signatures on the documents, copies of which were also not provided to the petitioner.

The Counsel for Revenue submitted:

1. The fact that the petitioner had accepted, that such transactions took place during the period in issue, and had deposited amounts, towards tax, interest and penalty on 17.02.2022 would show that the amounts were deposited by the petitioner voluntarily.

2. The objection concerning the deposit of the amount was taken only after the second summons was issued i.e., summons dated 13.04.2022.

The High Court noted:

Clearly, the facts which have emerged, disclose that although payments were made in the prescribed form, no document has been placed on record by the revenue, demonstrating acknowledgement of having accepted the payment. Therefore, the stand taken by revenue, that this was a voluntary payment, based on self-ascertainment of tax, interest and penalty, is not established, as the provisions of Section 73/74 of the 2017 Act has not been adhered to.

The High Court observed that the following circumstances reveal, that the amounts deposited did not have an element of voluntariness attached to it. - Please see **2022-TIOL-1591-HC-DEL-GST**

1. There is no dispute, that Rs.1,80,10,000/- was deposited in four (4) tranches, on the dates and at the time:

   - Rs. 35,00,000/- on 17.02.2022 at 01:28 AM

   - Rs. 1,00,00,000 on 17.02.2022 at 02:15 AM

   - Rs. 20,25,000/- on 17.02.2022 at 05:04 AM

   - Rs. 24,85,000/- on 17.02.2022 at 07:03 AM

2. It is also not in dispute, that the search proceedings commenced on 16.02.2022 at about 03:30 PM and were concluded on the following day i.e., 17.02.2022 at 09:30 A.M

3. The fact, that deposits were made [during the early hours of 17.02.2022] when the search had not concluded, would show that the payments were not voluntary. The deposits made were not aligned with provisions of sub-section (5) of Section 73 or sub-section (5) of Section 74.

4. If the payments/deposits were voluntary, then an acknowledgement of having received the payment should emanate from the proper officer, as mandated in the prescribed form i.e., GST DRC-04, as prescribed under sub-section (2) of Rule 142 of the 2017 Rules.

The High Court further observed,

1. The malaise of officials seeking to recover tax dues (in contrast to voluntary payments being made by assesses towards tax dues) during search, inspection or investigation was sought to be addressed by the GST- Investigation, CBIC via Instruction No. **01/2022-2023** dated 25.05.2022.

2. It appears that this Instruction was issued by the GST-Investigation Wing, CBIC, in the backdrop of an order, passed by the Gujarat High Court in the matter of ***Bhumi Associate v. Union of India*** - **2021-TIOL-397-HC-AHM-GST** , whereby the following wholesome directions were issued-

a) 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.

b) 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.

c) 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.

d) 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 High Court noted that Instruction No. 01/2022-2023 dated 25.05.2022 inter alia, provides, that no recovery of tax should be made during search, inspection, or investigation unless it is voluntary. But 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, 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.

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 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.

The High Court observed that the reason that the officers of the revenue have been asked, perhaps, to have the amounts deposited the day after the search is concluded, is, to also give space to the concerned person to seek legal advice, and only thereafter deposit tax, interest and penalty, wherever applicable, upon a proper self-ascertainment.

The High Court concluded:

1. That the amounts which were deposited lacked an element of voluntariness.

2. The amount of Rs.1,80,10,000/- should be returned to the petitioner, along with interest at the rate of 6%.

3. The amount will be remitted to the petitioner within ten days.

The High Court directed CBIC to align Instruction No. 01/2022-2023 dated 25.05.2022 with the directions issued by the Gujarat High Court in ***Bhumi Associate***. - **2021-TIOL-421-HC-AHM-GST**

Why does this happen? What mystic forces ignite passion in an assessee that he makes four voluntary payments totalling Rs. 1.8 Crores at 01:28 AM, 02:15 AM, 05:04 AM and 07:03 AM? Just imagine the horror drama that must have been tortuously enacted from 1.28 am to 7.03 am, which time is normally spent sleeping by ordinary people. Just after midnight, you don't usually go round organising finance because some GST officers think that you owe money to the government. Of course, they must be grateful to the kind officers that they were not arrested and made to spend a few days in jail.

What happens to a businessman if nearly two crores are collected from him, when he claims that he need not pay any tax and that the amount is unfairly retained by the department under the pretext of 'voluntary payment'? Are our taxmen out to destroy business? Their job is to collect the correct tax, not a penny more, not a penny less - and that too legally. What has the government achieved? They end up paying interest for this voluntary payment. Why can't these premier investigative agencies be trained to follow the laws?

And I wonder what would have happened if there was no facility of online payment.

Until Next week