L&S UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

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INDIRECT TAX

Amount deposited involuntarily during investigation violates Articles 265 and 300-A of the Constitution – To be refunded to assessee

UPDATE NO. 12 OF 2022

Lakshmikumaran
& Sridharan
attorneys

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"Courts are reiterating the earlier jurisprudence on coercive recovery during investigation as incorrect and any recovery made under threat and without the authority of law leads to violation of Constitutional rights of an assessee."

V. Lakshmikumaran,
Managing Partner, L&S

The Division Bench of the Karnataka High Court has affirmed the Judgement of the Single Judge wherein the amounts deposited with the Department at odd hours during the DGGI investigations were held to be paid involuntarily. The Department was held liable to refund the amount.

The High Court differentiated between illicit collection of money during investigation and a voluntary deposit made under Section 74(5) of the Central Goods and Services Tax Act, 2017 (**'CGST Act'**) and directed GST investigating authority to refund the amount so collected.

BRIEF FACTS

- The Appeal was filed by the Department against the Order passed by the Single Judge Bench of the High Court of Karnataka dated 14 September 2021.

- An investigation was initiated by the Director General of Goods and Services Tax Intelligence, Hyderabad (**'DGGI'**) against the Company alleging non-payment of proper taxes by the third-party service providers and Input Tax Credit (**'ITC')** availed by the Company was denied. Further it was alleged that the third-party service provider was non-existent entity and no services were availed by the company.

- During investigation and recording of statements of directors, the GST investigation authority, under threat of arrest and coercion, recovered the disputed amount. Total amount paid by the company during the investigation was INR 27.5 crore. The company filed a Writ Petition before the High Court of Karnataka against the manner in which the GST investigation was conducted and sought directions to the Department to refund the amount deposited by the company.

- The Single Member Bench of the High Court vide the Order dated 14 September 2021 held that the amount paid by the Petitioner was involuntary. The High Court directed the Department to consider the refund application of the company. It also held that the statutory remedy of refund would not displace the petitioner from approaching the High Court. The Court further held that the right of refund would be independent of the process of investigation and the two cannot be linked. The High Court also directed for video recording of investigation process.

- The Revenue Department had filed the appeal before the Division Bench of the High Court of Karnataka.

ISSUES

The Court framed the following four issues for consideration:

1. Whether the amount was voluntarily paid during the investigation under Section 74(5) of CGST Act by the Company?
2. Whether the amount recovered from the company during investigation was under coercion and threat of arrest?
3. Whether the DGGI officers conducted themselves in a high handed and arbitrary manner during the course of investigation?
4. Whether writ petition filed by the company suffers from delay or laches?

DECISION

- On examination of the factual position, evidence on record and conduct of the company, it was held that the amount deposited by the Company during investigation was involuntary and under coercion. The Court observes that the statutory powers must be exercised in consonance with the spirit and letter of the law and not in a manner to instil fear in the mind of a *bona fide* taxpayer. The amount deposited by the company was not a voluntary payment under Section 74(5) of the CGST Act.

- In terms of Article 265 of the Constitution of India, no tax can be collected without the authority of law otherwise it will amount to depriving a person of his property. In the instant case, since the deposit was not made under Section 74(5) of the CGST Act under own ascertainment of the company, it was evident that the same was collected by the Department in violation of Constitutional safeguards.

- The Court relied up on the past jurisprudence to hold that the amount collected during investigation proceedings without any adjudication was liable to be refunded. (*Vodafone Essar South Ltd.* v. *UoI, Makemytrip India Pvt. Ltd.* v. *UoI, Century Knitters India Ltd.* v. *UoI and Concepts Global Impex* v. *UoI.*)

- Section 54 of the CGST Act provides a period of two years from the date of deposit to file an application for refund. Hence, there existed no delay or laches in filing the Writ Petition.

- The amount recovered from the company was in violation of Article 265 and Article 300A of the Constitution. Therefore, the Department was liable to refund the amount to the company.

L&S comments:

The aforesaid decision has allowed refund of amount paid during investigation on the grounds that the amount paid was involuntary and under coercion. The department shall follow due process of law for recovery of disputed dues as provided in the Constitution and GST Regulations. The Court reiterated the past jurisprudence on subject matter.

The assessees shall exercise the option of voluntary payment provided under Section 73(5) and 74(5) of the CGST Act after independently examining the legal position. The provision is provided to correct genuine mistake in law or errors and to reduce unnecessary litigation.

Any amount paid during investigation without admitting the liability or exercising the options provided for voluntary payment under Sections 73(5) and 74(5) of the CGST Act can be claimed as refund.

Mr. V. Lakshmikumaran, along Mr. Ravi Raghavan, Mr. Syed M Peeran and Mr. Asish Philip Abraham, from Lakshmikumaran & Sridharan Attorneys had represented the client before the Karnataka High Court.

[*Union of India & Ors.* v. *Bundl Technologies Private Limited* & *Ors.* – Judgment dated 3 March 2022 in Writ Appeal No. 1274 of 2021, Karnataka High Court]

LOCATIONS

NEW DELHI
5 Link Road, Jangpura Extension,
New Delhi 110 014
PHONE: 011-4129 9800

B-6/10, Safdarjung Enclave,
New Delhi 110 029
PHONE: 011-4129 9900
E-MAIL: Lsdel@lakshmisri.com

MUMBAI
2nd Floor, CNERGY IT Park,
Old Standard Mill,
Appa Saheb Marathe Marg,
Prabhadevi,
Mumbai 400 025
PHONE: 022-2439 2500
E-MAIL: Lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden, 2nd Street,
Chennai 600 006
PHONE: 044-2833 4700
E-MAIL: Lsmds@lakshmisri.com

BENGALURU
World Trade Center,
No. 404-406, 4th Floor, South Wing,
Brigade Gateway Campus,
No. 26/1 Dr. Rajkumar Road,
Malleswaram West,
Bengaluru 560 055
PHONE: 080-4933 1800
E-MAIL: Lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road,
Opp. Methodist Church, Nampally,
Hyderabad 500 001
PHONE: 040-2323 4924
E-MAIL: Lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad 380 009
PHONE: 079-4001 4500
E-MAIL: Lsahd@lakshmisri.com

PUNE
607-609, Nucleus,
1 Church Road, Camp
Pune 411 001
PHONE: 020-6680 1900
E-MAIL: Lspune@lakshmisri.com

KOLKATA
2nd Floor, Kanak Building,
41, Chowringhee Road,
Kolkata 700 071
PHONE: 033-4005 5570
E-MAIL: Lskolkata@lakshmisri.com

CHANDIGARH
SCO No. 59, 1st Floor,
Sector 26, Madhya Marg,
Chandigarh 160 026.
PHONE: 0172-492 1700
E-MAIL: Lschd@lakshmisri.com

GURUGRAM
OS2 & OS3, 5th Floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurugram 122 001
PHONE: 0124-477 1300
E-MAIL: Lsgurgaon@lakshmisri.com

PRAYAGRAJ (ALLAHABAD)
3/1A/3, (Opp. Auto Sales)
Colvin Road, Lohia Marg,
Prayagraj 211 001
PHONE: 0532-242 1037/242 0359
E-MAIL: Lsallahabad@lakshmisri.com

KOCHI
1st Floor, PDR Bhavan,
Palliyil Lane, Foreshore Road,
Ernakulam, Kochi 682016
PHONE: 0484-486 9018/486 7852
E-MAIL: Lskochi@lakshmisri.com

JAIPUR
2nd Floor (Front side),
Unique Destination, Tonk Road,
Near Laxmi Mandir Cinema Crossing,
Jaipur, Rajasthan 302 015
PHONE: 0141-456 1200
E-MAIL: Lsjaipur@lakshmisri.com

NAGPUR
1st Floor, HRM Design Space,
90-A, Next to Ram Mandir,
Ramnagar, Nagpur 440033
PHONE: +91-712-2959038/2959048
E-MAIL: Lsnagpur@lakshmisri.com

www.lakshmisri.com

Lakshmikumaran & Sridharan attorneys

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SINCE 1985