

TAX INFO

Dated 12/05/2022

Latest update on GST Law: Petitioner cannot be forced to deposit GST without adhering to the procedure provided under Section 74 of the CGST Act as given in Judgment by High Court Of Rajasthan.

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication

Name of Petitioner	M/s. Dhariwal Products
Name of Respondent	Union Of India
Court	High Court Of Rajasthan
Date of Judgement	09.02.2022
Appeal No.	D.B. Civil Writ Petition No. 2189/2022

Brief Facts of the Case Law:

It is the case of the petitioner that in conducting undertaking search operations in the petitioner's premises without prior intimation is totally illegal, unjust and highhanded. The GST Intelligence Officer, though present at the residence of the petitioner, gave a sham notice to the petitioner's representative for appearance in the factory premises and thereafter forcibly extracted a confession from him. The petitioner was forced to deposit a sum of Rs.11.5 crores towards alleged GST evasion even though there is no evidence of such short payment/evasion. As soon as the petitioner's representative got the opportunity, he made a retraction of the statement. As the statement has been retracted, the Department is required to adopt the mandatory procedure provided under Section 74 of the CGST Act, but rather than adhering to the said procedure, repeated notices are being issued to the petitioner's representative under Section 70 of the CGST Act and he apprehends arrest on appearance before the officers, if their illegal demand of payment of GST is not accepted. Even the amount which has already been deposited is not a voluntary deposit as the petitioner seriously disputes the liability. GST authorities are bypassing the lawful procedure and are trying to extract more money from the petitioner under the facade of it being a voluntary deposit. The liability of the petitioner towards non-payment/evasion of GST has not been determined and without doing so, the officers are pressurizing the petitioner to voluntarily deposit the amount or to face the consequence of arrest. Thus, the impugned notices are grossly illegal and amount to an abuse of power by the GST officials.

Decision of the Court:

Prima facie, it appears that the impugned action has been resorted to without adhering to the procedure provided under Section 74 of the CGST Act. As the petitioner's representative claims to have retracted from the confession, and the voluntary nature of deposit of GST pursuant to the search proceedings dated 05.01.2022 is seriously disputed, the procedure provided under Section 74 of the CGST Act would have to be followed. Once this procedure is adopted, the authorities would not be able to procure allegedly short paid GST amounts by branding it to be a voluntary deposit. It was directed that no coercive steps shall be taken against the petitioner/its representatives in furtherance of the search/seizure operations dated 05.01.2022 and the summons issued in pursuance thereof and the petitioner shall not be forced to deposit any amount towards GST without adhering to the procedure provided under Section 74 of the CGST Act.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>