

# TAX INFO

*Dated 27/10/2021*

Latest update on GST Law: Information regarding **Payment made as goodwill gesture during investigation cannot be taken as self-ascertained tax and refund of same shall be allowed as given in Judgement by Karnataka High Court.**

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<b>Name of Petitioner</b>	M/S. Bundl Technologies Private Limited
<b>Name of Respondent</b>	Union of India
<b>Court</b>	Karnataka High Court
<b>Date of Judgement</b>	14/09/2021
<b>Appeal No.</b>	WP 4467/2021

## **Facts of the Case:**

The Petitioner operates an e-commerce platform under the name 'Swiggy' who does the delivery of food through delivery partners that include electronic pick-up by those who are engaged by the Petitioner. During the festivities owing to spike in food orders, the third-party service providers are engaged by Petitioner. The third-party service providers charge consideration for delivery and supply of food along-with Goods and Services Tax ("GST") and the GST paid by the Petitioner to the third party service providers is availed as Input Tax Credit ("ITC") by the Petitioner. DGGI investigated the Petitioner on the ground that third party service provider of the Petitioner i.e. "Greenfinch" was a non-existence entity and accordingly the ITC availed by the Petitioner were fraudulent.

## **Contention of Petitioner:**

That on November 29, 2019, during the investigation, the Petitioner was forced to make payment of Rupees 15 Crore under the threat of arrest. On December 27, 2019, the Petitioner was forced to make further payment of tax of Rupees 12,51,44,157/-. The Petitioner alleged that a sum of Rupees 27, 51, 44,157/- was illegally collected under threat and coercion. Furthermore, no Show Cause Notice ("SCN") was issued by the DGGI.

## **Contention of Respondent:**

That the question of exercise of Coercion and Threat was not made out by them. The Payments even as per the communication of the Petitioner was made as a goodwill gesture and that the payments made are to be construed as payment of tax in furtherance of self-ascertainment as given under Section 74(5) of the CGST Act.

## **Decision of the Court:**

The Hon'ble court held that Swiggy's payment made as goodwill gesture during investigation cannot be taken as self-ascertained tax and directed the department to consider refund application of the Petitioner which was collected under coercion during investigation by the DGGI relating to alleged wrongful availment of ITC on the invoices without actual receipt of services.

**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>