

Payments Made During Investigation - Voluntary or Forced?

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Jigar Doshi

Founding Partner, TMSL



Swapnil Kolte

Manager

Background

Currently, the GST journey is predominantly characterized by extensive legal disputes, encompassing routine evaluations, audits, and thorough examinations of tax returns, as well as more serious undertakings such as investigations, searches, seizures, and arrests. The Directorate General of GST Intelligence (DGGI) and the Anti Evasion wing are actively engaged in suppressing tax evasion and uncovering counterfeit invoice providers to purify the nation's tax environment.

Issue

It is undeniable that certain provisions within the GST law have been perceived as harsh, such as provisional attachment, the power of arrest, and the blocking of credit ledger etc. These provisions have been subject to frequent discussions regarding their constitutionality and ethicality. Additionally, in various legal precedents, taxpayers have alleged that revenue authorities compelled them to make tax payments against their will, under the threat of arrests and imprisonment. Conversely, revenue authorities contend that the taxpayers made payments voluntarily, without any coercion. This ongoing debate is likely to remain a point of contention for the foreseeable future.

The courts face an arduous task in determining whether taxpayers made payments willingly or due to intimidation or force from officers, as it is nearly impossible to ascertain. Consequently, the courts must rely on circumstantial evidence to make their judgments.

The question here is that why is it necessary to know whether the payment is voluntary or forced. The answer to this is that it determines the next steps or the procedure to be followed by the officers.

Section 73(5), 73(6), 74(5) and 74(6) of the CGST Act, 2017 are relevant for voluntary payment and their further course of action. The said sections state that a person chargeable with tax may pay the amount of tax along with interest and penalty (if applicable) **basis his own ascertainment or on ascertainment by the officer**. Further, the law prescribes that in case where the taxpayer makes such payment and intimate the officers, the said officer would not issue a SCN in such cases.

However, Rule 142(2) of the CGST Rules, 2017, state that in cases of voluntary payment of tax, the

taxpayer needs to inform the officer of such payment in FORM DRC 03 and the officer **shall** acknowledge the same in FORM DRC 04 [Acknowledgement of acceptance of payment made voluntarily].

Hence, it is safe to say that in cases of search and investigations, the officer shall either issue FORM DRC 04 (if payment is made voluntarily and accepted) or shall issue a SCN (if payment is not made voluntarily or payment made falls short of actual amount due). However, what happens if the officer does not do both? What if the taxpayer later alleges that the payment made was not done voluntarily and hence was forced. This article focusses on answering both the questions.

Analysis

The CGST Act of 2017 does not employ the phrase 'voluntary payment,' opting instead for 'payment based on own ascertainment.' However, both the courts and taxpayers commonly use the terms 'voluntary payment' and 'on own ascertainment' interchangeably. Therefore, to comprehend how the courts interpret the term 'voluntary payment' or 'on own ascertainment,' it is essential to examine significant judgments pronounced under GST.

The concept of voluntary payment was discussed by the Gujarat High Court in the case of **Bhumi Associate v. Union of India** [\[TS-53-HC\(GUJ\)-2021-GST\]](#) wherein the High Court directed CBIC to issue instructions and guidelines in matters where payment is done during investigations. The High Court stated the following:

"The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:

(1) 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.

(2) 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.

(3) Facility of filing [a] 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.

(4) 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."

Hence, the Gujarat High Court issued a clear directive stating that no payment should be accepted during an ongoing investigation, and it should only be done once the investigation is concluded. Building upon this directive, the Central Board of Indirect Taxes and Customs (CBIC) issued Instruction No. 01/2022-23 [GST - Investigation] on May 25, 2022. Although not explicitly stated, the instruction emphasized that no tax recovery should take place during a search, inspection, or investigation unless it is voluntary. This marked a significant development as an unspoken rule was established, prohibiting officers from collecting any taxes during the course of an investigation. The primary objective was to minimize instances where taxpayers allege harassment by department officials.

Further, the Delhi High Court also in the case of **M/s. Vallabh Textiles vs Senior Intelligence Officer and Ors.** [\[TS-667-HC\(DEL\)-2022-GST\]](#) after evaluating the facts of the case in detail held that

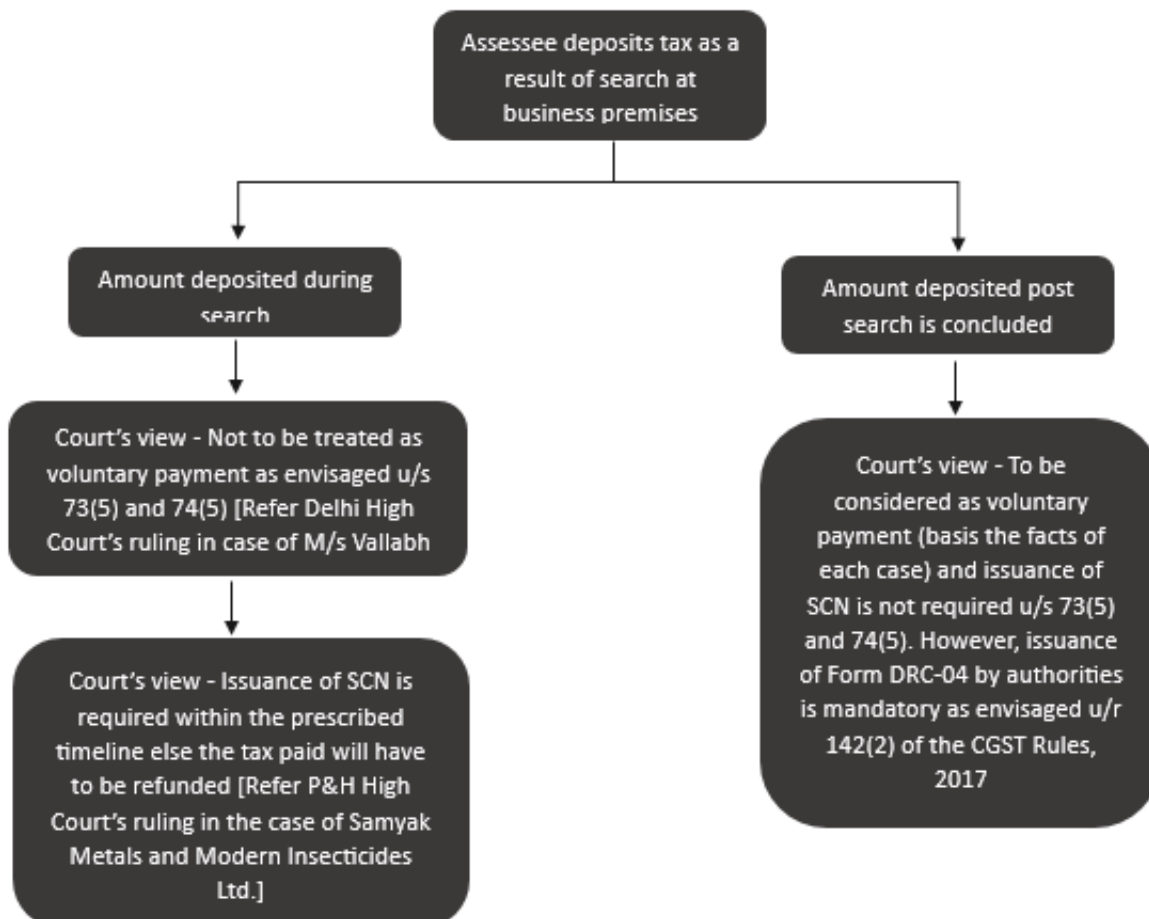
"The deposit made during the search was in contravention of the provisions of Rule 142(1A) and 142(2) of the Central Goods & Service Tax Rules, 2017; the assertion being that there was no notice issued by the proper officer, ascertaining the tax, interest and penalty payable by the petitioner-concern, 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 i.e., GST DRC-04 as stipulated in sub-rule (2) of that very rule i.e., Rule 142."

The P&H High Court in the case of **Modern Insecticides Ltd and another vs Commissioner, Central Goods and Service Tax and Another** [\[TS\(DB\)-GST-HC\(P&H\)-2023-351\]](#) have also answered similar query. In this case the facts were that an investigation was conducted at the assessee's premises and summons were issued. The assessee reversed ITC vide FORM DRC-03 as a voluntary deposit of tax prior to issuance of SCN u/s 74, but did not receive FORM DRC-04 or a SCN from the department for the next two years. The contention of the department was that as per Section 74(6) of the CGST Act, 2017, they are not liable to issue a notice in case the assessee makes a voluntary payment of tax equal to the tax actually payable. The P&H High Court while relying on the case of Vallabh Textiles (cited supra), Bhumi Associate (cited supra), and Government instructions dated May 25, 2022 issued by the CBIC stated that even if an assessee wants to make voluntary payment in the prescribed form i.e., GST DRC-03, he/she should be advised to file the same the day after the investigation has ended and the concerned officers have left the premises of the assessee. The High Court directed the revenue to refund the amount deposited by the assessee along with interest within stipulated timeline.

The same High Court has recently in the case of **M/s Samyak Metals Private Limited vs UOI & ors** . [\[TS-245-HC\(P&H\)-2023-GST\]](#), has held that a taxpayer may apply for refund of tax paid voluntarily or under protest in case of non-issuance of show cause notice and FORM DRC 04 within stipulated timeline. The facts of the case were that the assessee reversed their ITC along with interest and penalty. However, the officer did not issue FORM DRC 04 or a SCN under section 73/74 even after two years had lapsed.

To consolidate and summarise the judicial precedents cited above, we have presented the above discussion in an easy-to-understand flowchart:



Conclusion:

While the above flowchart presents a picture of how the Courts infer the term voluntary payment and the procedure required to be followed by the officer subsequently, the facts of each case and the scenarios would drive the conclusion of each case. Also, the term voluntary payment and payment on the basis of own ascertainment should be understood on a case-to-case basis. There could be multiple scenarios emanating from an investigation and each scenario could have a different conclusion such as payment made during investigation on the basis of own ascertainment without any coercion but later the taxpayer may feel that his case is defensible; payment made during the investigation under coercion but later the taxpayer accepts the demand; payment made only to stop the interest meter in case of demand in future; and so on and so forth. In any case, like discussed above, the department is bound to issue either DRC-04 or a SCN. While non-issuance of these documents for an extended period may motivate a taxpayer to file a refund claim basis the above precedents, but the grant of same is not certain. This is because the Courts may also hold that non issuance of DRC-04 is only a procedural lapse and the same cannot be construed to be a blunder so grave that refund is to be granted to a taxpayer who has acknowledged his short payment/ non-payment of taxes. Nonetheless, like it's said, you cannot punish a man for trying - taxpayers may keep relying on the aforementioned judgments and claim refund where there is inaction on the part of department post search and investigation for an extended period.

The views are personal.