

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF MARCH 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE M.G.S.KAMAL

W.A. No.1274 OF 2021 (T-RES)

IN

W.P.No.4467 OF 2021 (T-RES)

BETWEEN:

1. THE UNION OF INDIA
REP. BY THE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
128-A/NORTH BLOCK
NEW DELHI - 110 001.
2. DIRECTORATE GENERAL OF GOODS
AND SERVICES TAX INTELLIGENCE
NEW DELHI
5TH FLOOR, MTNL TELEPHONE EXCHANGE
BUILDING, 8, BHIKAJI CAMA PLACE
NEW DELHI- 110 066.
3. SENIOR INTELLIGENCE OFFICER
DIRECTORATE GENERAL OF GOODS
AND SERVICES TAX INTELLIGENCE
HYDERABAD ZONAL UNIT - 500 016
H NO. 1-11-222/4 LANE OPP HDFC BANK
HYDERABAD-560016.
4. DEPUTY DIRECTOR
DIRECTORATE GENERAL OF GOODS
AND SERVICES TAX INTELLIGENCE

HYDERABAD ZONE UNIT - 500 016
 H NO. 1-11-222/4
 LANE OPP HDFC BANK
 HYDERABAD 560016.

5. ADDITIONAL DIRECTOR
 DIRECTORATE GENERAL OF GOODS
 AND SERVICES TAX INTELLIGENCE
 HYDERABAD ZONE UNIT - 500 016
 H NO. 1-11-222/4 LANE OPP HDFC BANK
 HYDERABAD 560016.
6. PRINCIPAL ADDITIONAL DIRECTORATE GENERAL
 DIRECTORATE GENERAL OF GOODS
 AND SERVICES TAX INTELLIGENCE
 HYDERABAD ZONE UNIT - 500 016
 H NO. 1-11-222/4 LANE OPP HDFC BANK
 HYDERABAD 560016.

... APPELLANTS

(BY MR. M.B. NARGUND, ADDL. SOLICITOR GENERAL A/W
 MR. AMIT ANAND DESHPANDE, ADV.,)

AND:

1. M/S. BUNDL TECHNOLOGIES PRIVATE LIMITED
 A COMPANY REGISTERED UNDER THE
 INDIAN COMPANIES ACT
 HAVING ITS REGISTERED OFFICE AT NO.55
 SY. NO. 8-14, GROUND FLOOR
 I AND J BLOCK, EMBASSY TECH VILLAGE
 OUTER RING ROAD, DEVARBISANAHALLI
 BENGALURU - 560 103
 (REP. BY ITS DIRECTOR
 PANDURANGA ACHARYA
 DIRECTOR - LEGAL).
2. THE STATE OF KARNATAKA
 THROUGH ITS PRINCIPAL SECRETARY
 FINANCE DEPARTMENT
 VIDHANA SOUDHA
 BENGALURU-560001.

3. COMMISSIONER OF STATE TAX
GOODS AND SERVICE TAX
BENGALURU-560071.

... RESPONDENTS

(BY MR. LAKSHMI KUMARAN, ADV., FOR
MR. RAVI RAGHAVAN, ADV.,
MR. SYED M. PEERAN, ADV.,
MR. SIDDHARTH BALVE, ADV.,)
- - -

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT, PRAYING TO SET ASIDE THE ORDER OF THE
LEARNED SINGLE JUDGE PASSED IN WP NO.4467/2021 DATED
14.09.2021.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 24.02.2022, COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, **ALOK ARADHE J.,**
MADE THE FOLLOWING:

JUDGMENT

This intra Court appeal takes an exception to order
dated 14.09.2021 passed by the learned Single Judge by
which the writ petition preferred by the respondent No.1 has
been disposed of with the direction to the appellants to
consider the applications for refund submitted by the
respondent No.1 and to pass suitable orders thereon within a
period of four weeks, in the light of observations made in the
order. In order to appreciate the appellants' grievance,
relevant facts need mention.

2. The respondent No.1 namely M/s. Bundl Technologies Pvt. Ltd. (hereinafter referred to as 'the Company' for short) operates an e-commerce platform under the brand name of 'Swiggy'. On the aforesaid platform, the consumers can place orders for delivery of food from nearby restaurants, which is made through delivery partners which include pick up and delivery partner (PDP) who are directly engaged by the Company as well as temporary delivery executives (Temp DEs) whose services are procured by the Company through third party service providers. During normal operations, the deliveries are carried out by the PDPs which accounts for 90% of the total food deliveries. However, on account of sudden spike in food orders during holidays, festive season and weekends, the company engages Temp DEs from third party service providers to cater to sudden spike in food orders.

3. In case of PDPs who are directly engaged by the Company, no goods and services tax (hereinafter referred to as 'the GST' for short) is charged as they are below the

threshold limit for registration. However, third party service providers charge the Company the consideration paid to Temp DEs along with mark up 5.5 - 10% along with GST on the entire consideration. The Company entered into an agreement dated 20.05.2017 and 14.11.2017 with a third party service provider namely Green Finch Team Management (P) Ltd. (Green Finch). Under the aforesaid agreement, Green Finch provided temporary DEs to the Company on a cost-plus mark-up basis and also charged GST on the entire sale consideration. Green Finch is a Company incorporated under the provisions of Companies Act on 08.02.2016 and its Annual General Meeting was held on 31.03.2021 as per the official website of Ministry of Corporate Affairs portal. For the period under the investigation i.e. 2017-20, Green Finch provided 10,31,464 Temp DEs to the Company which in turn provided 2,91,75,667 food deliveries through them.

4. For providing aforesaid services, Green Finch raised valid tax invoices on the Company and charged applicable GST which was paid to Green Finch which deposited the

same with the Department by filing GSTR-3B return. The Company availed input tax credit in terms of Section 16 of Central Goods and Services Tax, 2017 (hereinafter referred to as 'the CGST' for short).

5. An investigation was initiated by the Department with regard to services provided to the Company by third party service providers namely Green Finch by Director General of Goods and Services Tax Intelligence, Hyderabad Zonal Unit (hereinafter referred to as 'the DGGI' for short) on the ground that Green Finch was a non-existent entity and accordingly, the input tax credit availed by the Company and the GST component paid by it to Green Finch against the invoices raised by Green Finch were fraudulent. The Officers of the Department entered the premises of the Company on 28.11.2019 at 10.30 a.m. During the course of the investigation from 28.11.2019 till 30.11.2019, DGGI Officers issued spot summons to the Directors and employees of the Company and their statements were recorded by the DGGI Officers. On 30.11.2019 at about 4.00 a.m., a sum of Rs.15 Crores was deposited by the Company under the GST cash

ledger. On 30.11.2019 itself the Officers of the Company handed over the documents to DGGI officers between 6.45 a.m. to 8 a.m.

6. Thereafter, the Directors of the Company received summon to appear before DGGI office at Hyderabad on 26.12.2019. The Directors of the Company namely Mr.Harsha Majety, Mr.Bharat Arora, Director (Finance and Accounts), Mr.Mehul Shah, Senior Manager (Taxation) and Mr.G.Prahalad, Advocate, visited the office of the DGGI at 11 a.m. Thereafter, statements of Mr.Harsha Majety was recorded. Mr.Rahul Jaimini appeared before DGGI Officers on 26.12.2019 in response to the summons issued to him. The statement of aforesaid Mr.Rahul Jaimini was recorded. Thereafter, Mr.Obul Lakshminandan Reddy appeared at around 4 p.m. on 26.12.2019 in the DGGI office. It is averred that the Directors were present till late hours on 26.12.2019 in the DGGI office and about 8 p.m. were locked in DGGI office. It is also averred that threats of arrest were held out to them during the investigation and they were not allowed to leave till early hours of 27.12.2019. The Officers

of the Company therefore made a further sum of Rs.12,51,44,157/- at about 1 a.m. in order to secure the release of three directors of the company. Thus, in all, a sum of Rs.27,51,44,157/- was illegally collected from the Company during the course of investigation under the threat and coercion without following the procedure prescribed under the CGST Act.

7. Despite a lapse of about 10 months of initiation of investigation, no show cause notice was issued to the Company. The Company therefore submitted a letter dated 29.09.2020 seeking refund of the amount of Rs.27,51,44,157/-. Thereafter, the Company also filed an application on 16.12.2020 before the jurisdictional GST office. However, the application submitted by the petitioner failed to evoke any response. The Company thereupon filed the petition seeking a writ of mandamus directing the Department to forthwith refund the amount of Rs.27,51,44,157/- along with interest at the rate of 12% from the date of deposit till its refund. The petitioner also assailed the validity of Section 16(2)(c) of the CGST Act as

well as Karnataka Goods and Services Tax Act, 2017 as unconstitutional on the ground that it is violative of Article 14, 19(1)(g) and 300A of the Constitution.

8. The appellants filed a detailed statement of objections in which inter alia it was pleaded that investigation was initiated in exercise of powers conferred under the Act relating to wrongful availment of input tax credit during which it was noticed that Green Finch, so also its suppliers were non-existent entities and in the course of such investigation, summons were issued to the Directors and Officers of the Company. It is also asserted that during the course of the investigation, the deposit of the amount was voluntarily made by the Company.

9. The learned Single Judge, by an order dated 14.09.2021 inter alia held that payment of the amount made by the Company during the course of investigation was involuntary. It was further held that Court does not desire to place any sort of fetter on the power of investigation of the officers of the Department. However, it was held that

consideration of the right to seek refund of the amount deposited by the Company is independent of the process of investigation and two cannot be linked together. Accordingly, the writ petition was disposed of with the direction to consider and pass suitable orders on the applications for refund filed by the Company within a period of four weeks from the date of release of the order. The Department was directed to consider the applications for refund in the light of the observations made in the order. In the aforesaid factual background, this appeal has been filed.

10. Learned ASGI for the appellants submitted that input was received by the Department that Green Finch is a non-existing company and huge input tax credit is being credited to the company. It is further submitted that respondent did not receive any services from Green Finch or its inward suppliers and is therefore not entitled to claim input tax credit on the same. It is also submitted that the Company did not disclose that it has deposited an amount of Rs.4.74 Crores during investigation in respect of a different issue which was not claimed as refund and therefore, has not

approached this Court with clean hands. It is urged that Company voluntarily paid an amount of Rs.27,51,44,157/- on self-ascertainment basis in terms of Section 74(5) of CGST Act. It is contended that allegations of threat and coercion are misconceived as the DGGI Officers had no power to arrest the Directors of the Company which is evident from spot summons issued to the Directors which clearly state that Officers of the Company were summoned to give evidence under Section 71 of the CGST Act.

11. It is further contended that in any case, neither the issue of coercion can be examined in a writ proceeding nor any finding can be recorded on the said issue as the same is a question of fact. It is also pointed out that the Company approached this Court by filing a writ petition after a period of 15 months from which an inference can safely be drawn that allegations of threat and coercion are clearly an after thought. Lastly it is contended that a time limit be prescribed for issuance of notice under Section 74 of the Act and the amount deposited by the company be made subject to outcome of the proceeding. In support of aforesaid

submissions, reliance has been placed on the decision of High Courts of Kerala and Gujarat in **'SURESH KUMAR P.P. VS. DY.DIRECTORATE GENERAL OF GST INTELLIGENCE (DGGI), THIRUVANANTHAPURAM', 2020 (41) G.S.T.L. 17 (KER.)**, **'COMMISIONER OF CCC & ST HYD. - 11 VS. PEERS TECHNOLOGIES PVT. LTD.'**, **2019 (27) G.S.T.L. TIOL (TRI. HYD)**, **'CEGAT, SOUTHERN REGIONAL BENCH, MADRAS - S.P.A.M. KRISHNA CHETTIAR VS. COLLECTOR OF CUSTOMS AND CENTRAL EXCISE MADURAI', 1985 (22) E.L.T. 63 (TRIBUNAL)**.

12. On the other hand, Learned Senior Counsel for the company submitted that Greenfinch is a company in existence which is evident from the official website of the ministry of corporate affairs portal and has obtained GST registration from the Department. It is also pointed out that the aforesaid company has periodically filed its returns until September 2019. It is also pointed out that on the basis of the stand taken by the department, the company had suspended the services availed by it from Greenfinch with effect from 09.12.2018 and had terminated the agreement.

Thereupon Greenfinch initiated arbitration proceedings viz., CMP No.155/2021 for appointment of an Arbitrator, which is pending before this court. It is also pointed out that Greenfinch raised valid tax invoices on the company charging applicable GST. Therefore, the allegation that Greenfinch is an non existing entity and that the company had not received any services from Greenfinch is factually incorrect. It is also urged that the amounts were recovered from the company on 30.11.2009 between 6.00 am to 6.30 a.m. and in the mid night hours of 26.12.2019 / 27.12.2019 and the company was compelled to deposit the amount in electronic cash ledger. Thus, it is also urged that under the apprehension of arrest and imprisonment, the amount was recovered from the company.

13. It is contended that recovery of tax during the investigation is illegal and unconstitutional and therefore, the company is entitled to refund of the amount deposited by it under threat and coercion. Our attention has also been invited to the communication dated 30.11.2019 sent by the company to the department and it has been pointed out that

the company reserves its rights to claim the refund and the same cannot be treated as admission of its liability. Therefore, it is contended that the amounts has not been deposited in term of Section 71(5) of the Act. It is pointed out that Section 54 of the act provides for time limit of two years from the date of payment for the claim of refund and the same was filed with the department within time on 16.12.2020. It is urged that the company initially sought refund from the department and thereafter filed the writ petition, as the attempts of the company to seek refund failed to evoke any response from the department. Therefore, in the facts of the case there is no delay in filing the writ petition. It is contended that action of DGGI officers in detaining the Directors of the company till late in the night and in coercing the company to deposit the amount at odd hours during the course of investigation is high handed and arbitrary and honest tax payers like officers of the company have to be treated with dignity. In support of aforesaid submissions, reliance has been placed on the decisions in **'DABUR INDIA LTD. Vs. STATE OF UTTAR PRADESH' (1990) 4 SCC 113, 'D.K.BASU Vs. STATE OF WEST**

BENGAL' (1997) 1 SCC 416 AND 'MAKEMYTRIP (INDIA) PVT. LTD. Vs. UNION OF INDIA' (2016) 44 S.T.R.481 (Del.).

14. The CGST Act is a code in itself and provides for complete and detailed machinery for levy, collection and recovery of tax. Section 39 of the CGST Act deals with furnishing of returns. Section 54 provides for refund of tax, and mandates a claimant to make an application before the expiry of two years from the relevant date.

15. In the obtaining factual matrix following issues arise for our consideration:-

(I) Whether the amount was voluntarily paid during the investigation by the company under section 74(5) of CGST Act?

(II) Whether the amount was recovered from the company during investigation under the coercion and threat of arrest?

(III) Whether the DGGI officers conducted in a High handed and arbitrary manner during the course of

investigation?

(IV) Whether writ petition filed by company suffers from delay or laches?

16. Now we may proceed to deal with issues ad-seriatim.

(I) WHETHER THE AMOUNT PAID DURING INVESTIGATION BY THE COMPANY WAS VOLUNTARILY PAID, UNDER SECTION 74(5) OF THE CGST ACT?

17. Section 74 of the Act deals with determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts. The relevant extract of section 74 reads as under:-

74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which

has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

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(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

Thus Section 74(5) of the Act gives an option to a person to make payment of tax, along with interest and 15% of penalty on its own ascertainment of the tax ascertained by proper officer and inform him in writing about such payment.

18. It is pertinent to note that a division bench of Gujarat High Court in **M/S BHUMI ASSOCIATE VS. UNION**

OF INDIA by an interim order directed the Central Board Of Indirect Taxes And Customs was directed to enforce the following guidelines by issuing 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 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.

The guidelines issued by the division bench are intended to regulate the powers of officers carrying out search and seizure as well as to safeguard the interest of the assessee.

19. The issue which arises for consideration is whether amount of Rs.27,51,44,157/- has been paid by the company on its own ascertainment under section 74(5) of the Act. In the instant case, there is no material on record to indicate that the amount of Rs.15 Crores and an amount of Rs.12,51,44,157/- which were paid at about 4AM and 1PM on 30.11.2019 and 27.12.2019 respectively were paid on admission by the Company about its liability. There is no communication in writing from company to the proper officer about either self ascertainment or admission of liability by company to infer that such a payment was made under

Section 74(5) of the Act. The company intimated the Department vide Communication dated 30.11.2019 that it reserves its right to claim refund of the amount and the same should not be treated as admission of its liability. The relevant extract of communication dated 30.11.2019 reads as under:-

BUNDL TECHNOLOGIES PRIVATE LIMITED

Registered Office, 4th Floor, Annex Building, Maruthi Chambers, Survey No.17/9B
 Begur Hobli, Roopana Agrahara, Bengaluru, Karnataka, India 560068 CIN:U74110KA2013PTC096530

November 30, 2019

To,
 The Office of the Commissioner,
 Directorate General of Goods and
 Service Tax Intelligence, Hyderabad
 H.No.1-11-222/4, Lane Opp.HDFC Bank
 Nalli Silks, Begumpet, Hyderabad-500016.
 Sub: Submission related to investigation
 Ref: Inspection dt:28/29 November 2019 by DGGSTI
 Officials at BTPL's offices situated at
 Bangalore, Gurugram and Hyderabad.

Dear Sir,
 XXXXX

As an extension of our goodwill conduct and bonafide, we have deposited INR 15,00,00,000/- (Rupees Fifteen Crores Only) with the Exchequer of Government during the pendency of inspection proceedings. The above deposit is without prejudice to and with full reservation of our rights and contentions to seek necessary refund at the appropriate time and therefore, should not be regarded as an admission of liability. The challan of payment of the aforesaid deposit is enclosed herewith for your ready reference as Annexure E.

We assure you of our full co-operation in this matter going forward.

20. The company has also reiterated its stand in GST DRC-03 generated on 2.12.2019, the relevant portion of which is reproduced below:

FORM GST DRC - 03
[See Rule 142(2) & 142(3)]
Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement

ARN:AD291219000080K

Date: 02.12.2019

1.	GSTIN		29aaafcb7707d1zq								
2.	Name		Bundl Technologies Private Limited								
3.	Cause of payment		Others								
4.	Section under which voluntary payment is made		Others								
5.	Details of show cause notice, if payment made within 30 days of its issue		Reference No.NA						Date of issue: NA		
6.	Financial year		2017-18								
7.	Details of payment made including interest and penalty if applicable (Amount in Rs.)										
Sr. No	Tax period	Act	Place of supply	Tax / cess	Interest	Penalty if applicable	Others	Total	Ledger utilized (Cash / Credit)	Debit entry No.	Date of debit entry
1.	Jul 2017 - Mar 2018	ITST	Karnataka	5,056,604.00	0.00	0.00	0.00	5,056,604.00	Cash	DC2912190003301	02/12/2019

8. Reasons, if any:

The above payment is made as an extension of our goodwill and bonafide. It is without prejudice to and with full reservation of our rights and contentions to seek necessary refund at the appropriate time and therefore should not be regarded as an admission of liability.

21. Thus it is evident that payments have not been made admitting the liability. On the other hand, the company reserved its right to seek refund and made it expressly clear that payment of the amount should not be treated as admission of its liability. Besides the aforesaid, there is no material on record to establish that guidelines issued by division bench of High Court of Gujarat were followed.

Thus for the aforementioned reasons, the first issue is answered in the negative and it is held that the amount was not paid voluntarily under Section 74(5) of the CGST Act.

(II) WHETHER THE AMOUNT WAS RECOVERED FROM THE COMPANY DURING INVESTIGATION UNDER THE COERCION AND THREAT OF ARREST?

22. The officers of the Department have power of Inspection, search and seizure u/s 67(1) of CGST Act whereas Section 70 of the Act confers the power on the authority to summon person to give evidence as well as to adduce evidence. The relevant extract of Section 67(1) and Section 70 of the Act read as under:

67. Power of inspection, search and seizure.

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that -

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand , or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of

transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act.

He may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

70. Power to summon person to give evidence and produce documents.

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

23. In **VODAFONE ESSAR SOUTH LTD VS. UNION OF INDIA', 2009 (237) ELT 35 (BOM)** it was held by Division Bench of Bombay High Court that without adjudication of liability, during the course of an investigation the assessee should not be forced to pay any amount. Similar view was taken by Delhi High Court in **MAKEMYTRIP (INDIA) PVT. LTD. VS. UNION OF INDIA, 2016 (44)**

STR 481 DEL and it was held that amount collected during investigation proceeding without any adjudication is liable to be refunded. In **CENTURY KNITTERS (INDIA) LTD. VS. UNION OF INDIA', 2013 (293) ELT 504 (P & H)** it was held that any amount illegally collected cannot be retained without issuance of show cause notice and adjudication of liability and such amount is liable to be refunded. Similar view was taken in **CONCEPTS GLOBAL IMPEX VS. UNION OF INDIA, 2019 (365) ELT 32 (P & H).**

24. In the instant case, an investigation was initiated by DGGI officers and they entered the premises of the Company on 28.11.2019 at 10.30 a.m. in exercise of powers u/s 67(1) of CGST Act. On 30.11.2019 at about 4.00 a.m., a sum of Rs.15 Crores was deposited by the Company under the GST cash ledger. Thereafter summons were issued to officers of company under section 70 of the Act. The officers of the company made a further deposit of Rs.12,51,44,157/- at about 1.00 a.m. The aforesaid amounts were not deposited under section 74(5) of the Act. The amounts were deposited by the company at odd hours, without admitting its

liability. The company has been regularly filing service tax returns. There is no iota of material on record to indicate that on the day that the company made payment of the amount, any amount was due to the department. Therefore, it can safely be inferred that payment of the amount was made involuntarily. There is also no material on record to hold that any threat of arrest was extended to officers of the company.

25. The question whether any threat was extended to officers of the company is a question of fact which can't be adjudicated in a summary proceeding under Article 226 of the Constitution of India. Liberty is reserved to the parties to agitate the issue of threat and coercion in an appropriate proceeding. Accordingly the second issue is answered by stating that amounts were paid by the company involuntarily.

**(III) WHETHER THE DGGI OFFICERS CONDUCTED
IN A HIGH HANDLED AND ARBITRARY MANNER
DURING THE COURSE OF INVESTIGATION?**

26. DGGI officers have invoked the provisions under section 67(1) of the CGST Act relating to inspection, search

and seizure and have issued summons under Section 70 of CGST Act to officers of the company to give evidence. The company has taken a stand in the writ petition that during the course of investigation, the DGGI officers have acted in a high handed and arbitrary manner and that the officers locked the door and extended threats of arrest to Directors of the Company. However, the Department has disputed the aforesaid stand in its objections and has asserted that investigation took place in a cordial atmosphere in which officer of the company co-operated with DGGI officers. It is pertinent to note that company in the writ petition has neither attributed any specific role to officers of DGGI by name nor has impleaded them in the writ petition. Therefore, the same being a question of fact cannot be adjudicated in a summary proceeding under Article 226 of the constitution of India.

27. Before parting with the issue we would like to state that no one in a society governed by rule of law can take resort to a course of action not permissible in law. A Statutory power has to be exercised reasonably and in good

faith, and for the purpose for which it is conferred. The power vested in any Authority by law has to be exercised in consonance with the spirit as well as letter of the Act. The broader the sweeper ambit of the power, the more caution and circumspection is required while invoking such power. A statutory power has to be exercised within a system of controls and has to be exercised by relevance and reason. It needs reiteration that a statutory power should not be exercised in a manner, so as to instill fear in the mind of a person.

However, the facts and circumstances of the case the third issue is kept open to be agitated in an appropriate proceeding.

IV Whether the Writ Petition filed by the Company, suffers from Delay or laches:-

28. The rule which says that this Court in exercise of its power under Article 226 of the Constitution may not enquire into belated and stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion. The question of delay has to be decided in the

facts of each case. The principle on which relief to a party on the grounds of delay and laches is denied is that rights may have accrued to others by reason of delay in filing the Writ Petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The lapse of time is not attributable to any laches or negligence. The test to decide the question of delay is not physical running of time **(SEE: DEHRI ROHTAS LIGHT RLY CO. LTD V. DISTRICT BOARD BHOJPUR (1992) 2 SCC 598 AND ROYAL ORCHID HOTELS V. G. JAYARAM REDDY (2011) 20 SCC 608).**

29. Section 54 of CGST Act deals with refund of tax.

Section 54(1) of the Act is extracted below:

54. Refund of Tax: (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Thus, an application seeking refund of any tax and interest if any, under the Act has to be made within a period of two years.

30. In the backdrop of well settled legal principles and the statutory provision we may advert to the facts of case in hand. The Company deposited a sum of Rs.15 Crores at about 4.00 a.m. on 30.11.2019 and a sum of Rs.12,51,44,157/- on 27.12.2019. The company filed an application seeking refund on 29.09.2020. Thereafter the company filed an application seeking refund on 16.12.2020 on 16.12.2020 before jurisdictional GST authority. The Company requested the department to refund the amount. When the attempts of the company to seek refund did not yield any result, the writ petition was filed on 25.02.2021. Section 54 of the CGST Act provides for a time limit of two years to claim refund. The company not only filed the claim for refund within two years but the writ petition as well. No rights have accrued to the department, as the claim for refund made by the company is well within time. Therefore in the light of legal principles referred to in the preceding paragraph, it can not be said that there was any delay or laches in filing writ petition. Therefore the fourth issue is answered by stating that there is no delay or laches in filing the writ petition.

31. The submission by the company that Green Finch is neither a non-existent entity nor that the company has rightly availed input tax credit is concerned need not be adverted to in this proceeding, as the same is pending investigation. Article 265 of the Constitution mandates that collection of tax has to be by the authority of law. If tax is collected without any authority of law, the same would amount to depriving a person of his property without any authority of law and would infringe his right under Article 300A of the Constitution of India as well. In the instant case, the only provision which permits deposit of an amount during pendency of an investigation is section 74(5) of CGST Act, which is not attracted in the fact situation of the case. Therefore, it is evident that amount has been collected from Company in violation of Article 265 and 300-A of the Constitution. Therefore, the contention of the Department that amount under deposit be made subject to the outcome of the pending investigation can not be accepted. The Department, therefore, is liable to refund the amount to the Company.

For the aforementioned reasons, we concur with the conclusion recorded by the learned Single Judge. To the aforesaid extent, the findings recorded by the learned Single Judge are modified.

In view of preceding analysis, we do not find any merit in this appeal. The same fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SS