



CBIC requires strict disciplinary action where tax-officers force recovery during search/inspection/investigation

To eradicate the instances of forced or coerced 'recovery' by any Tax Officer during the course of search or inspection or investigation proceedings, CBIC clarifies that there may not be any circumstances necessitating 'recovery' before issuance of SCN and subsequent confirmation of demand by adjudication order; Informs that in case complaint from a taxpayer is received regarding use of force or coercion 'recovery' for getting the amount deposited during search or inspection or investigation, the Pr. Commissioner/Chief Commissioners/Pr. Director General are to make quick enquiry and take strict disciplinary action as per law if any wrongdoing has been found on part of any tax officer; However, apprises that, there is no bar on taxpayer for voluntarily making the payment on self-ascertainment basis; Examining the instances of forced or coerced 'recovery' by the Tax Officer during the course of search or inspection, further clarifies that recovery of taxes not paid or short paid u/s 79 of CGST Act can be done only after following due legal process of law: CBIC Instruction

M & C View:

It is often seen when any search or investigation is being done, there is always a threat or a fear which looms on the taxpayer. It is very clear that no tax can be demanded by the officers during such operations and proper procedure u/s 73 or 74 must be followed with adequate opportunity provided to the taxpayer. Any payment made by the taxpayer during such operations as voluntary payment in DRC 03 will be difficult to retract later that it was coerced.

Like they say in Hindi "Satark raho jagruk raho".

F. No. GST/INV/Instructions/2022-23

वित्त मंत्रालय
राजस्व विभाग
केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड
GST-Investigation Wing

10वा माला, टावर-2,
जीवन भारती बिल्डिंग
कनाट सर्कस, नई दिल्ली-110001.
दिनांक 25th May,2022

Instruction No. 01/2022-23 [GST - Investigation]

Subject: Deposit of tax during the course of search, inspection or investigation - reg.

During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making 'recovery' during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon'ble High Courts in this regard.

2. The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73(5) and Section 74 (5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.

3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.

4. Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

5. Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.

A.M.J.
25/5/22
(Vijay Mohan Jain)
Commissioner (GST-Inv.),
CBIC

To

1. Principal Director General [DGGI], New Delhi.
2. Principal Chief Commissioner(s)/ Chief Commissioner(s) of CGST, All Zones.
3. Webmaster, CBIC (www.cbic.gov.in) for uploading on the website of CBIC under Instructions.