

Karnataka HC: Swiggy's payment made as goodwill gesture during investigation not self-ascertained tax; Directs 'refund' consideration.

Karnataka HC rules that “right of refund ...would be independent of the process of investigation and two cannot be linked together...” while allowing writ petition of Bundl Technologies (assessee operating e-commerce platform ‘Swiggy’) filed during on-going investigation of ITC fraud against it and parallel investigation against its delivery partner; By such directs Revenue to consider refund application of assessee seeking Rs. 27.51 crores which was collected from assessee by coercion during investigation by Directorate General of Goods and Service Tax (Intelligence) [DGGI] relating to alleged wrongful availment of ITC on the invoices without actual receipt of services; Assessee contended that it deposited Rs. 15 crore, in first tranche, followed by Rs. 12.51 crore, in second tranche, under coercion to secure the release of its directors who were summoned and locked with threat of arrest and moreover, no SCN u/s 74 has been issued by Revenue even after 10 months has passed since investigation initiated; Discarding Revenue’s defence that voluntary payment by assessee in a goodwill gesture is to be construed as tax in furtherance of self-ascertainment u/s 74(5), outlines the statutory mandate of section 74 (5) that “payment of tax ...even if construed to be voluntary will not by itself in anyway lead to a conclusion that same is paid...under section 74(5)...the scheme of self-ascertainment ...would not admit of making of payment and continuance of investigation”; Revenue’s contention that investigation is pending itself indicates that contention of self-ascertainment as made by it is an “after-thought” and put forward as a defence to Petitioner’s assertion that payment of amount has been made involuntarily; Observes that sequence of events relating to investigation and payment sourced, demonstrate a nexus between investigation and contemporaneous payment, further the manner in which investigation has been carried out in late hours of the night and early hours of morning with physical gates closed reasonably create an apprehension in the mind of any person as “the fear of police powers are such that would shake a man irrespective of their position in society”; Hence, holds that retention of said amounts by Dept. right from Nov. 2019 till date where investigation is not concluded “would call upon the department to honour legitimate claims being made for refund of the amount which cannot be grudged. Lack of time and lack of conclusion of investigation has only exacerbated the situation conferring upon the petitioners a right to seek for refund”; Finding SC’s observations in Dabur India case as aptly applicable to present case, quotes “filing of return and payment of substantial taxes by the petitioner would clearly warrant for treating such tax payers with certain element of dignity” who can only be construed to be “bona fide tax payer”.