HC-KAR
CNR: KAHC020215572025

NC: 2026:KHC-D:14353
WP No. 108177 of 2025

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IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 31ST DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT PETITION NO. 108177 OF 2025 (T-RES)

BETWEEN:

M/S. HUKKERI TALUKA SAMAGRA
GRAMEEN ABHIVRADDI SANGH,
CTS 2360, GURUKRIPA BUILDING,
NEAR BDCC BANK, HUKKERI,
BELAGAVI, KARNATAKA- 591309,
GSTIN: 29AAAAH1667D1ZU

REPRESENTED HEREIN BY
ITS PRESIDENT,
MR. VIJAYAKUMAR RAVADI
S/O BALAPPA RAVADI,
AGED ABOUT 66 YEARS,
ADDRESS HOUSE NO. 2360/1,
NEAR BUS STAND,
HUKKERI BELAGAVI,
KARNATAKA- 591309,
AADHAR NO: 324976146396,
MOB: 9735595311
EMAIL: rjdijuly2017@gmail.com

...PETITIONER

(BY SRI. GANESH VISHWANATH SHANDAGE, ADVOCATE AND
SMT. PRATIMA SHIPURKAR S., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
   REPRESENTED BY CHIEF SECRETARY,
   VIDHANA SOUDHA,
   BENGALURU- 560009.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
COMMERCIAL TAX DEPARTMENT,
GOVERNMENT OF KARNATAKA,
COMMERCIAL TAX OFFICE-1,
FIRST MAIN ROAD,
GANDHINAGAR,
BENGALURU- 560009.

3. THE JOINT COMMISSIONER
OF COMMERCIAL TAXES (APPEALS)
COMMERCIAL TAX DEPARTMENT
GOVERNMENT OF KARNATAKA,
SUMOULYA SOUDHA, 5TH FLOOR,
CLUB ROAD, BELAGAVI- 590001.

4. THE JOINT COMMISSIONER OF
COMMERCIAL TAXES ENFORCEMENT
COMMERCIAL TAX DEPARTMENT
GOVERNMENT OF KARNATAKA,
SUMOULYA SOUDHA,
4TH FLOOR, CLUB ROAD,
BELAGAVI- 590001.

5. THE JOINT COMMISSIONER OF
COMMERCIAL TAXES ADMINISTRATION
COMMERCIAL TAX DEPARTMENT
GOVERNMENT OF KARANTAKA,
SUMOULYA SOUDHA, 4TH FLOOR,
CLUB ROAD, BELAGAVI- 590001.

6. THE COMMERCIAL TAX OFFICER,
SGSTO-381, SANSUDDI BUILDING,
POST OFFICE ROAD,
SANKESHWAR- 591313.

7. THE COMMERCIAL TAX OFFICER,
(ENFORCEMENT) GOKAK,
NORTH ZONE, BELAGAVI,
SUMOULYA SOUDHA,
CLUB ROAD, BELAGAVI- 590001.

8. THE COMMERCIAL TAX OFFICER,
(ENFORCEMENT)-3, BELAGAVI,
SUMOULYA SOUDHA,

CLUB ROAD, BELAGAVI- 590001.

...RESPONDENTS

(BY SRI. GANGADHAR J.M., AAG AND
SMT. NANDINI SOMAPUR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, A. ISSUE A WRIT OF CERTIORARI, OR SUCH OTHER WRIT, ORDER OR DIRECTION IN THE NATURE OF A WRIT OF CERTIORARI, QUASHING THE IMPUGNED ORDERS IN APPEAL VIDE ARN NO. AD2902250288123 DATED 28.08.2025 FOR FY 2017-18 AND ARN NO. AD290225028856R DATED 28.08.2025 FOR FY 2018-19, BOTH PASSED BY RESPONDENT NO. 03 UNDER SECTION 107(11) OF KARNATAKA GST ACT, 2017 (ANNEXURE Y-1 AND ANNEXURE Y-2 RESPECTIVELY) AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. POONACHA

ORAL ORDER

The present writ petition is filed seeking for the following reliefs:

> a. *"Issue a Writ of Certiorari, or such other writ, Order or direction in the nature of a Writ of Certiorari, quashing the impugned Orders in Appeal vide ARN No. AD2902250288123 dated 28.08.2025 for FY 2017-18 and ARN No. AD290225028856R dated 28.08.2025 for FY 2018-19, both passed by Respondent No. 03 under Section 107(11) of Karnataka GST Act, 2017 (Annexure Y1 and Annexure Y2 respectively);*
>
> b. *Issue an appropriate writ, order or direction, holding and declaring that the petitioner is legally entitled to receive a refund amount of Rs.53,97,352 (38,97,352+15,00,000) along with applicable interest, which the Respondent No. 07 has recovered from the Petitioner during the course of investigation*

under duress by adopting coercive and forceful means without any pre-dated subsisting tax demand outstanding at relevant time;

c. *Issue a Writ of Mandamus, or such other writ, Order or direction, as this Honourable Court may deem fit to Respondent No. 06 to grant refund of the entire amount of Rs.53,97,352 (38,97,353+15,00,000) coercively recovered along with applicable interest; and*

d. *Pass such other or further orders as this Honourable Court may deem fit and proper in the facts and circumstances of the case, and in the interests of justice, equity and good conscience, including the costs of this writ petition."*

2. The relevant factual matrix in a nutshell is that the petitioner is a registered taxpayer engaged in providing manpower supply services to various government departments and public authorities and is registered under the provisions of the Central Goods and Services Tax Act, 2017[1], as well as the Karnataka Goods and Services Tax Act, 2017[2]. It is the case of the petitioner that he has periodically filed the returns under the relevant statutory provisions.

3. It is the further case of the petitioner that on a purported intelligence report alleging discrepancy between the petitioner GSTR-3B and GSTR-7 records, the respondent

[1] Hereinafter referred to as the 'CGST Act'
[2] Hereinafter referred to as the 'KGST Act'

No.4/Joint Commissioner authorised the respondent No.7/Commercial Tax Officer[3] to inspect the petitioner's premises. Accordingly, on 20.01.2024, the CTO along with other officials inspected the premises of the petitioner. Subsequently, the petitioner on 27.03.2024 is stated to have voluntarily paid a sum of ₹20,97,352/- and ₹15,00,000/- (i.e., a total sum of ₹35,97,352/-) (details at Annexures-A1 and A2 to the writ petition) under Section 73(5) of the CGST Act. The petitioner has also submitted Form GST DRC-03 towards the said payments. It is the contention of the petitioner that the said payments made on 27.03.2024 was made under duress.

4. Thereafter, notice dated 08.05.2024 (Annexure-P1 to the writ petition) and endorsement dated 13.05.2024 (Annexure-P2 to the writ petition) has been issued by the CTO. Vide the endorsement dated 13.05.2024, the petitioner has been called upon to appear in person on 16.05.2024 at 11.00 a.m., in the office of the CTO. The petitioner was further notified that, in the event, he failed to appear for personal hearing, legal action would be initiated under Section 70 of the

[3] Hereinafter referred to as the 'CTO'

KGST Act. At this juncture, it is pertinent to notice that no provision of law is mentioned in the endorsement dated 13.05.2024, pursuant to which, the personal appearance of the petitioner was required. The respondents also do not dispute that no provision of law is mentioned in the intimation/endorsement dated 08.05.2024.

5. The petitioner is stated to have voluntarily made a payment of ₹18,00,000/- on 14.05.2025 (Annexure-A2 to the writ petition) under Section 73(5) of the CGST Act. The petitioner has also filed Form GST DRC-03 with respect to the said payment. It is the contention of the petitioner that the said payment of ₹18,00,000/- is also under duress.

6. Thereafter, a Show-cause notice dated 18.07.2024 has been issued in Form DRC 01A under Section 74 of the CGST and KGST Act, making a demand of a sum of ₹3,21,870/- along with interest and penalty (Annexure-Q to the writ petition). The petitioner, vide reply dated 29.07.2024, (Annexure-R to the writ petition), has replied to the said Show-cause notice dated 18.07.2024. Thereafter, a Show-cause notice dated 07.08.2024, (Annexure-S to the writ petition), has

been issued in Form GST DRC-01 Rule 142(1A), being a Show-cause notice issued under Section 74 of the KGST Act. The petitioner vide reply dated 02.09.2024, (Annexure-T to the writ petition), has replied to the same. In the said reply, the petitioner has specifically stated that he was coerced to pay a sum of ₹53,97,352/-, which was involuntary and under the protest.

7. Thereafter, the petitioner made refund applications dated 12.09.2024 (Annexures-C1 and C2 to the writ petition), seeking for refund of a sum of ₹38,97,352/- and ₹15,00,000/-. In the said refund applications, the petitioner has detailed the sequence of events, under which, it is alleged that a forceful recovery was sought to be made by the authorities, consequent to which, the said payments have been made. The petitioner was afforded an opportunity of personal hearing and thereafter, the refund applications were rejected vide orders dated 12.11.2024 (Annexures-B1 and B2 to the writ petition).

8. Subsequently, an adjudication order under Section 74(9) of the CGST/KGST Act dated 06.02.2025, (Annexure-W to the petition), was issued. The petitioner filed

W.P.No.103059/2025 assailing the notice dated 06.02.2025. A Co-ordinate Bench of this Court, vide interim order dated 03.06.2025 (Annexure-X1 to the writ petition), has directed that the respondent shall not precipitate the matter till the next date of hearing.

9. The petitioner had filed an appeal [Appeal No.GST-902/2024-25/B-945], challenging the rejection of refund orders. The appeal filed by the petitioner assailing the refund applications were also rejected by the Joint Commissioner by order dated 28.08.2025 (Annexure-Y1 to the writ petition). Being aggrieved, the present petition is filed.

10. It is the primary contention of the learned counsel for the petitioner that the payments made by the petitioner on 27.03.2024 and 14.05.2024 are as a result of coercion by the respondents/authorities and hence, the petitioner is entitled for refund of the said amounts.

11. Learned Additional Advocate General appearing for the State vehemently contesting the allegations made by the petitioner submits that the payments made on 27.03.2024

were after 68 days of inspection that was conducted on 20.01.2024. It is further contented that the second payment made on 14.05.2024 was after 41 days of the first payment. In any event, it is contented on behalf of the State that the proceedings having been initiated under Section 74(9) of the CGST Act, vide the order dated 06.02.2025, (Annexure-W to the writ petition), the question of refunding the amounts paid by the petitioner does not arise.

12. It is forthcoming that pursuant to the inspection conducted on 20.01.2024, (Annexure-N to the writ petition), no proceedings have been initiated against the petitioner. The official respondents seek to rely on Section 73(5) of the Act to contend that there is a provision for making payment voluntarily, which has been availed by the petitioner. It is pertinent to notice Section 73(5) of the CGST Act, reads as under:

> "***73(5).*** *The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 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."

13. It is also pertinent to notice Rule 142(2) of the Central Goods and Services Tax Rules, 2017[4], which reads as under:

> ***"142(2).*** *Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 [or clause (i) of sub-section (8) of section 74A, as the case may be, or tax, interest and penalty in accordance with the provisions of subsection (5) of section 74 or clause (i) of sub-section (9) of section 74A], or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act [2][whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A),] [8][he shall inform the proper officer of such payment in FORM GST DRC-03 and an acknowledgement, in FORM GST DRC–04 shall be made available to the person through the common portal electronically]."*

[4] Hereinafter referred to as the 'CGST Rules'

14. It is pertinent to note that Rule 142 of the Rules specifically stipulates that if a voluntary payment is made under sub-section (5) of Section 73 or Section 74 in Form GST DRC-03, an acknowledgment of such payment is required to be issued by the concerned authorities in Form GST DRC-04. Admittedly, in the present case, the respondents have not issued GST DRC-04.

15. Further, it is pertinent to note that sub-section (5) of Section 73 or Section 74 is to be made on the basis of own ascertainment of tax by the taxpayer or as ascertained by the proper officer. In the present case, there is no material on record to indicate any manner of assessment that has been made with regard to the tax on the basis of which the amounts that have been paid.

16. It is also pertinent to note that pursuant to the judgment of the Supreme Court in the case of ***Radhika Agarwal vs. Union of India***[5] and other judgments, instructions dated 25.05.2022 have been issued by the Commissioner/GST as to the manner and circumstances on

[5] (2025) 6 SCC 545

which voluntary payment is to be made. It is pertinent to notice the relevant portions of the said instructions, which is as under:

> "***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. <u>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</u>*

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."

(emphasis supplied)

17. Learned counsel for the petitioner relies upon the Division Bench judgment of this Court in the case of ***Union of India vs. Bundl Technologies***[6], whereunder the Division Bench, while considering an appeal filed against an order of the learned Single Judge, which ordered for refund of the tax amount paid and dismissed the appeal. The Division Bench while considering the question as to whether the amount paid during the investigation was voluntary, noticing Section 74(1) and (5) of the CGST Act as well as the judgment of the Division Bench of the Gujarat High Court in the case of ***Bhumi Associates vs. Union of India***[7]***,*** has held as under:

> ***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*

[6] [2022] 136 taxmann.com 112(Karnataka)
[7] (2021) 124 taxmann.com 429 (Guj.)

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.

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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."

18. Further, while considering as to whether the amounts recovered from the company during investigation was under coercion and threat, and as to whether the action of the concerned officers was high handed and arbitrary, the Division Bench held as under:

*"**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 instil 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.*

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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 cannot be accepted. The Department, therefore, is liable to refund the amount to the Company."*

19. A Co-ordinate Bench of this Court while considering a similar fact situation in the case of ***Sri. J. Ramesh Chand vs. Union of India and Others***[8], after noticing the Division Bench judgment of this Court in the case of ***Bundl Technologies***[6], as well as the judgment of the Supreme Court in the case of ***Dabur India Ltd. Vs. State of Uttar Pradesh***[9] and ***Radhika Agarwal***[5]***,*** as also various other judgments held as under:

> *"25. In the instant case, the material on record discloses that on 23.03.2023, the 3rd respondent undertook a raid at the residence of the petitioner and seized a laptop; thereafter, on 24.03.2023, the respondents 3 and 4 along with other officials undertook search and inspection proceedings in the principal place of business of the petitioner, during the course of which, a sum of Rs.10 crores was obtained / received / collected by them from the petitioner on 24.03.2023 itself. In my considered opinion, the material on record clearly indicates that the aforesaid payment of Rs.10 crores by the petitioner to the respondents was involuntaryand the same was not voluntary or by way of self-ascertainment as contended by the respondents for the following reasons:-*

[8] W.P.No.9890/2023, dated 13.10.2025, NC:2025:KHC:40313
[9] (1990) 4 SCC 113

(i) <u>It is an undisputed fact that prior to the search and inspection conducted by the respondents on 24.03.2023, they did not issue any notice to the petitioner nor were any proceedings to ascertain, adjudicate or determine the tax, interest and penalty payable by the petitioner which indicates that there was no occasion for the petitioner to pay the said sum voluntarily by way of self-ascertainment to the respondents, thereby indicating that the said amount was not paid voluntarily by the petitioner.</u>

(ii) Rule 142(2) of the CGST Rules, 2017, contemplates that upon the petitioner making payment in Form GST DRC-03, <u>the respondents are bound to issue an acknowledgment in Form GST DRC-04 to the petitioner; undisputedly, respondents did not issue any such acknowledgment to the petitioner which is a circumstance to clearly indicate that the said amount was not a voluntary payment made by the petitioner.</u>

(iii) <u>Prior to the search and inspection made by the respondents, there was no demand made by the respondents in relation to the amount paid by the petitioner under any of the provisions of the CGST Act, 2017, which is yet another circumstance to indicate that there was no warrant / reason for</u>

the petitioner to make voluntary payment during the course of search and inspection proceedings.

(iv) The material on record also indicates that even at the time of payment by the petitioner, the details, material particulars, quantification etc., of the alleged self - ascertainment and voluntary payment by the petitioner are conspicuously absent except for filling up Form DRC-03 which merely contains the amount without additional details in this regard; interestingly, there are no other contemporaneous document in this regard, thereby establishing that the payment made by the petitioner cannot be construed or treated as voluntary as contended by the respondents.

(v) It is pertinent to note that the respondents would be entitled to invoke Section 74 only in cases of tax not paid / short paid / erroneously refunded / input tax credit wrongly availed or utilised by reason of fraud or any wilful - misstatement or suppression of facts; it follows therefrom that the provisions contained in Section 74 would apply only if the respondents were to prove the aforesaid allegations contemplated in the said provision made against the assessee; in such proceedings to be initiated under Section 74, it is highly inconceivable that a tax payer / assessee in respect of whom, search, seizure and inspection proceedings are being conducted by the respondents would

voluntarily make payment thereby exposing himself to the risk of admitting that he is guilty of the allegations contemplated in Section 74 of the CGST Act; in other words, in the light of Form GST DRC-03 said to have been submitted by the petitioner along with the payment by invoking Section 74 (5) of the CGST Act, it is highly / inherently improbable that the said payment was made voluntarily by the petitioner that too during the course of search, seizure and inspection proceedings and even before he became aware or came to know whether proceedings under Sections 73 to 74 would be initiated against him and as such, the payment made by the petitioner cannot be said to be voluntary by way of self-ascertainment on this ground also.

(vi) A perusal of the material on record will clearly indicate that prior to the payment made by the petitioner, there was no proceeding or order by the respondents which adjudicated or quantified or ascertained the amount payable by the petitioner nor any such quantification or ascertainment done / made by the petitioner for the purpose of arriving at the sum of Rs.10 crores paid by the petitioner, which was not preceded by any order or basis so as to arrive at the said figure; to put it differently, in the absence of any material to establish as to how the petitioner or quantified or arrived at a sum of Rs.10 crores paid by him and in the absence of

requisite / necessary material particulars / details in this regard, <u>it cannot be said that the said sum paid by the petitioner was voluntary and by way of self - ascertainment as contended by the respondents whose contention in this regard deserves to be rejected.</u>

(vii) A perusal of the material pertaining to search, inspection and seizure proceedings comprising of mahazar, seizure order etc., will indicate that on 23.03.2023 itself, the residence of the petitioner was inspected by the respondents who seized one laptop from the petitioner; on the very next day i.e., on 24.03.2023, the respondents seized various movable, articles comprising of account books, desktops, server disks, mobile phones, hard disks, laptop etc., from the business premises of the petitioner and all necessary data that was required for the purpose of self-ascertainment had been seized from the petitioner by the respondents; it follows therefrom that at the time of payment, there could not have been any material, accounts, etc., available with the petitioner that would enable him to proceed with self-ascertainment and accordingly, voluntarily make payment of Rs.10 crores to the respondents; in other words, in the light of the undisputed fact that all necessary material, account etc., which was the basis for self-ascertainment having been seized by the respondents, it is highly improbable that the

petitioner was in a position to carryout self-ascertainment and make payment which is yet another circumstance to establish that the said payment was not voluntary as falsely contended by the respondents, whose contention is liable to be rejected on this score also.

(viii) As stated supra, except conducting search, inspection and seizure proceedings, no other proceedings or order were initiated or passed by the respondents prior to the payment made by the petitioner and no ascertainment had been made / done by the respondents till that time; the undisputed fact that the respondents themselves ascertained the actual amount payable by the petitioner only during the pendency of the present petition by issuance of intimation in Form GST DRC-01A dated 17.02.2025, is sufficient to come to the conclusion that prior thereto and at the time of search, seizure and inspection proceedings during the course of which, payment was made, there was no ascertainment of the actual tax, interest and penalty payable by the petitioner which also establishes that the payment made by the petitioner was involuntary and not on his own account but at the instance of the respondents, whose contentions are liable to be rejected on this ground also.

(ix) <u>A perusal of the provisions contained in Section 74(5) of the CGST Act will indicate that voluntary payment by the petitioner would have to be made as per the procedure prescribed in the said provision, viz., firstly, ascertain the actual tax payable by him after verification / scrutiny of his accounts, secondly, calculate the interest payable by him in terms of Section 50 of the CGST Act,</u> which provides for discretion in payment of interest upto 18% / 24% p.a. and thirdly, to calculate the penalty at 15% on the tax payable by him; in other words, this process of self-ascertainment calls for and demands verification / scrutiny of accounts and calculation of discretionary rate of interest up to 18% / 24% which is not a fixed rate of interest and penalty, all of which is highly improbable and physically / humanly impossible to be done by a tax payer / assessee who is already under immense pressure on account of search, inspection and seizure operation being conducted, particularly when all equipment which would be required / necessary for such self-ascertainment was not available with the petitioner and as such, even on this ground also, I am of the view that the payment made by the petitioner was clearly not voluntary and at the behest / instance of the respondents during the course of their proceedings.

(x) <u>A perusal of the payment made by the petitioner in Form GST DRC-03 will indicate that the</u>

same is made under Section 74(5) of the CGST Act which mandates that such voluntary payment of tax should have been made by the petitioner along with interest under Section 50 of the CGST Act and penalty; in this context, the said payment in Form GST DRC-03 will indicate that no payment is made by the petitioner towards interest or penalty and the relevant columns in this regard are shown as 'Nil' which is yet another circumstance to indicate that the payment was not made by the petitioner voluntarily in terms of Section 74(5) of the CGST Act, 2017, as contended by the respondents whose contentions are liable to be rejected.

(xi) A perusal of the material on record will indicate that the payment of Rs.10 crores by the petitioner during the course of search, inspection and seizure proceedings is contrary to the directions issued by the respondents themselves in Instruction No.1/2022-23 dated 25.05.2022, in which the officials of the respondents have been cautioned / warned against taking steps to collect / receive / obtain voluntary payment and reiterated by the Apex Court in ***Radhika Agarwal's case supra****, and as such, the contentions of the respondents cannot be accepted on this ground also."*

(emphasis supplied)

20. As noticed by the Division Bench of this Court in the case of ***Bundl Technologies***[6] and a Co-ordinate Bench of this Court in the case of ***Sri. J. Ramesh Chand***[8], in the present case, the alleged voluntary payment made by the petitioner is admittedly under sub-section (5) of Section 74 of the CGST Act. The same mandates that the said voluntary payment of tax is to be made along with interest and penalty. However, in the DRC-03, it is clear that no payment is made by the petitioner towards interest or penalty and the relevant points are shown as nil. Further Rule 142(2) of the CGST Rules contemplates that upon the petitioner making payment in Form GST DRC-03, the respondents are bound to issue an acknowledgment in Form GST DRC-04. In the present case, admittedly the same has not been done. It is also pertinent to note that there was no demand made by the respondents of any amounts from the petitioner prior to the search or the payments made by the petitioner. Further, it is clear from the sequence of events that even the payment of ₹18,00,000/- made on 14.05.2024 is after issuance of the notice dated 13.05.2024, which required the petitioner to appear personally on 16.05.2024 at 11.00 a.m.

Admittedly, the said notice dated 13.05.2024 has not been issued under any provision of law.

21. Although it is a vehement contention of learned counsel on behalf of the respondents that the order in original has been passed and assessment have been made, the same is subject matter of challenge before this Court.

22. Mere proceedings initiated under Section 79 of the Act will not in any manner indicate that the payments made by the petitioner are voluntary.

23. The respondents have erroneously rejected the applications for refund made on behalf of the petitioner. In view of the discussions made above, the relief sought for in the writ petition is required to be granted. Hence the following:

ORDER

(i) The writ petition is ***allowed***;

(ii) The orders dated 28.08.2025 passed by respondent No.3 in Appeal No. AD2902250288123 for FY 2017-18 and order dated 28.08.2025 in ARN No.AD290225028856R for FY 2018-19 (Annexures-Y and Y1 to the writ petition) are hereby quashed;

(iii) Direction is issued to the respondents to refund a sum of ₹53,97,352/- together with interest at the rate of 6% per annum from the date of payment till the date of refund;

(iv) All rival contentions between the parties urged in the show-cause notice and adjudication proceedings are kept open to be adjudicated in the said proceedings.

Digitally Signed by CHEPPUDIRA MONNAPPA POONACHA

(C.M. POONACHA)
JUDGE

PMP para Nos.1 to 20
YAN para Nos.21 to end
Ct-gtb
List No.: 1 Sl No.: 24