

TAX FLASH NEWS

28 May 2022

Clarification by CBIC on voluntary deposit of tax during search, inspection or investigation

On reporting of allegation of use of force and coercion by officer for making recovery during course of search or inspection or investigation, CBIC has issued clarification¹ on legal position on voluntary deposit of tax. The clarification states that no recovery of tax can be made unless the amount becomes payable as per order issued by adjudication authority or under provisions of GST law and rules made therein.

Gist of the clarification

Voluntary payment of tax:

- Tax officer should inform taxpayers regarding the provisions of voluntary payment of dues.
- Taxpayers are permitted to make voluntary payment of tax before issue of show cause notice (SCN) in terms of section 73(5) and section 74(5) of GST Act (i.e. determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful-misstatement or suppression of facts; or, by reason of fraud or any wilful-misstatement or suppression of facts, as the case may be).
- Amount can be deposited voluntarily by taxpayer by submitting Form DRC-03 on GST portal.
- Voluntary payment of tax will help taxpayer in discharging admitted liability, self-ascertained or as ascertained by the tax officer without having to bear the interest for delayed payment of tax. This will also save the taxpayer from higher penalty imposable after issuance of SCN under above referred provisions of law.

Recovery:

- No recovery can be made unless amount becomes payable in pursuance of an order passed by adjudicating authority or under provisions of GST law and rules made therein.
- There may not arise any situation where recovery of tax dues must be made by officer during search, inspection or investigation on account of any issue detected during such proceedings.

Disciplinary action:

- In case of wrongdoing on part of any tax officer, CBIC has instructed Department to take strict disciplinary action.

Our comments

During last few months, there have been instances where taxpayers had deposited amount during search or investigation. Later, the taxpayers had approached Honorable High Courts for getting relief. This is very crucial clarification so that taxpayers do not deposit any amount under pressure but get a fair opportunity to be heard and represent itself before the adjudicating and appellate authorities. Though the amount to be deposited suo moto can be done through Form DRC-03, it is hoped that this clarification is followed in true spirit at ground level.

¹ Instruction No. 01/2022-23 [GST – Investigation] dated 25 May 2022, CBIC

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