Coercive recovery of taxes by the GST Department: Is it lawful?

The GST law mandates the tax officers to issue a show cause notice to the assessee in case of non-payment or short-payment of taxes or wrong availment of input tax credit. A show cause notice is the foundation on which adjudication proceedings begin under the GST law. In recent times, however, it has been observed that the Department is resorting to unreasonable recovery actions without following the due process of law.

It is an established principle of law that coercive steps cannot be taken for recovery of tax, interest or penalty without adjudication.

The Hon'ble Supreme Court in Dabur India Ltd. v. State of U.P. reported in AIR 1990 SC 1814 had observed that “it would not like to hear from a litigant that the Government is coercing citizens to make payment of duties which the litigant is contending not to be leviable. The Government is entitled to take all the legal steps for enforcement but it cannot be permitted to play dirty games with the citizens and coerce them in making payments which they are not legally obliged to pay. If the Government believes any money is due, it may take steps for recovery but it need not over reach itself and take extra-legal steps or manoeuver.”

A similar stance has also been taken by various High Courts in a plethora of cases. For instance, recently the Hon’ble Bombay High Court in the case of Neelkamal Realtors Power Pvt. Ltd. versus Union of India reported in 2019 (31) G.S.T.L. 53 (Bom.), held that “the Hon’ble Supreme Court as well as Hon’ble High Court has repeatedly held that rule of law has to be followed and no officers of the respondent can take law in his own hands or take extra-legal steps or maneuver so as to collect amounts which have not yet been held by judicial and/or quasi judicial order as payable by the petitioners to the respondent.”

It is not that GST department is bereft of means and powers if it has reason to believe that an assessee may alienate its property before the process of adjudication starts/ concluded. In order to protect the interest of revenue, section 83 of the GST Act conferes power on the taxing authorities to make a provisional attachment of the properties of the assessee, including its bank accounts. Nonetheless it is to be noted that Hon’ble Supreme Court in the case of Radha Krishan Industries versus State of Himachal Pradesh reported in 2021 (48) G.S.T.L. 113 (S.C.) has cautioned that the power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of such power must be strictly complied with. It was observed that before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

If an assessee confronts a situation where he is being forced to pay up a demand which department by the assessee is contesting as unlawful, in my opinion, the course of action available to the assessee would be to approach a writ court to get such a high handed action quashed.

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