



4344-2025

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4344 OF 2025

(Modern Traders, through its partner Mr. Ebrahim Fazal Din Vs. Deputy Commissioner/Joint Commissioner, Nagpur – II & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Kapil Hirani, Counsel for the petitioner.

Mr. R.K. Maheshwari, Counsel for respondent nos. 1, 3 and 5 to 7.

Mr. S.A. Ashirgade, A.G.P for respondent nos. 2 and 4/State.

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CORAM : ANIL L. PANSARE AND
NIVEDITA P. MEHTA, JJ.
FEBRUARY 20, 2026

Heard for some time.

2] Respondent nos. 1, 3 and 5 to 7 have, initially, filed reply on 1/10/2025. Then was filed an additional affidavit, which was filed on 4/2/2026. Thereafter, they filed additional affidavit on 18/2/2026. The last such reply was filed in view of order dated 6/2/2026, which reads as under :

“Pursuant to order dated 30/01/2026, Mr. Satish Kumar, Joint Commissioner (Anti Evasion), CGST, Nagpur; Mr. Rajesh Naukaria, Assistant Commissioner (Anti Evasion), CGST, Nagpur and Mr. Pankaj Kumar Paswan, Superintendent (Anti Evasion), CGST, Nagpur are present through Video Conferencing and Mr. Ashutosh P. Zodpey, Assistant Commissioner of State Tax, Nodal- 1 Division, Nagpur and Mr. Tejrao K. Pacharne, Additional Commissioner of State Tax, Nagpur Zone, Nagpur are physically present before the Court.

02. When enquired, Mr. Satish Kumar submits that the statement made by the learned Counsel on 30/01/2026 that the petitioner had submitted documentary evidence to the

Department showing ownership of the stock as well as payment of taxes is an incorrect statement. We will examine this aspect in due course. So far as imposition of 100% penalty on tax amount is concerned, we have invited their attention to the judgment of the Division Bench of this Court in the case of M/. Shiva Structures Pvt. Ltd. vs. Union of India and others (Writ Petition No.8614/2022), wherein the Court in paragraph 6 has held thus:

“6. In the light of above, when it is apparently a matter wherein the petitioner either was made to deposit or had deposited the money even before adjudication of its liability to pay the tax, such payment cannot be treated as a voluntary one; more so, when it was made on the very date when the petitioner’s premises was visited by the revenue officials.”

03. Thus, the Court held that the petitioner was made to deposit the money prior to adjudicating the liability to pay tax and such payment cannot be treated as a voluntary payment.

04. In the light of above, we have directed the respondents to justify imposing 100% penalty on the alleged tax payable by the petitioner. The respondents may also take corrective steps before the next date.

05. List on 20th February, 2026.”

3] As could be seen, the issue before the Court was that the petitioner was made to deposit money prior to adjudicating its liability to pay tax, and secondly, the revenue imposing 100% penalty on the alleged tax payable by the petitioner.

4] The revenue, in the additional affidavit of reply, has come up with a case that since the petitioner has paid the entire amount voluntarily, there is no question of revenue adjudicating liability and/or imposing 100% penalty on the alleged tax. Mr.

Maheshwari, learned Counsel for respondent nos. 1, 3 and 5 to 7, submits that the revenue had never imposed 100% penalty, but the petitioner itself deposited the said amount. He has then invited our attention to the instructions issued by the Central Government on 25/5/2022, by which, the department has issued clarification as regards legal position of voluntary payment of tax for ensuring correct application of law, and to protect interest of the tax payers. One of the Clauses, that we find relevant, is Clause No. 5, which reads thus :

“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.”

5] As could be seen, the revenue is under an obligation to enquire into the complaints received from tax payers regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation.

6] During the course of argument, the Counsel for the petitioner invited our attention to the judgment of the Delhi High Court in the case of *Sushil Kumar Vs. Delhi State GST Govt. NCT of Delhi And Ors. [W.P.(C) 15519/2023* decided on 26/2/2024], wherein, the Delhi High Court, in identical set of facts, considered the

aforesaid Circular, and held that where persons, like petitioner, are required to deposit amount during search or immediately after completion of search, the same cannot be treated as voluntary, and that, such action of deposit will be contrary to the aforesaid Circular issued by the department on 25/5/2022. This judgment has been annexed as Annexure – M and is, thus, a part of the petition.

7] The respondents, therefore, were aware of the fact that the Delhi High Court has taken a particular view in the identical set of facts. Despite that, in the additional reply, the revenue has not dealt with this vital aspect. Nonetheless, we enquired with Mr. Maheshwari as to why was action not taken in terms of Clause 5 of the Circular. He submits that the complaint/grievance was lodged in December – 2024, whereas, prior thereto, the petitioner, in June – 2024, made yet another communication without making any grievance. According to him, the subsequent communication is an improvisation/afterthought.

8] On this, we enquired with Mr. Maheshwari whether such status will relieve the revenue from acting in terms of Clause 5 of the Circular dated 25/5/2022. We did not get any satisfactory answer, except that the petitioner has improvised its stand, which, according to us, will not relieve the respondents from their obligation to enquire into the matter in terms of the aforesaid Circular.

9] As such, this aspect ought to have been dealt with by the revenue while filing first reply. Unfortunately, that has been not done, which remained undone even in second and third reply. The revenue seeks further time, which we grant with the hope that the revenue will also deal with the aspect of delay in taking a particular stand, and further, the reasons why this issue has been not addressed in the earlier replies. We may note here that subsequent replies, as filed and will be filed by the revenue, may also amount to improvisation in their original stand, which we will consider in due course.

10] Stand over to 6/3/2026.

(JUDGE)

(JUDGE)

Sumit