



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

WRIT PETITION NO.4344 OF 2025

[Modern Traders .vs. Deputy Commissioner/Joint Commissioner, Central Goods and Service Tax,
Nagpur-II and others]

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, Additional Government Pleader for Respondent Nos.2 and
4/State.

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CORAM : ANIL L. PANSARE AND
NIVEDITA P. MEHTA, JJ.
DATE : 06-03-2026.

1. Heard for some time.
2. In response to order dated 20th February, 2026, respondent nos.1,3, 5 to 7 have filed additional affidavit maintaining a stand that petitioner has voluntarily deposited the tax and penalty and lateron, as an afterthought, labelled the said act as coercive action of respondents.
3. The respondents have annexed with the affidavit, Office Memorandum dated 9th October, 2024 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, by which revised guidelines are issued for handling the complaints in various departments or organizations of Government of India. The emphasis of the respondents is on clause (3) of the guidelines which provides that the subsequent grievance made contains non-specific, un-verifiable allegations as may be decided by the competent authority should also be filed without verification of identity of the complainant.

4. We will deal with the said stand in due course. Prior thereto, we afford the respondents an opportunity to deal with the matter in the light of the law laid down by various courts.

5. The first is the judgment of the Division Bench of this court at Aurangabad in the case of *M/s. Shiva Structures Pvt. Ltd. .vs. Union of India and others (Writ Petition No.8614/2022)*, wherein following observations were made :

“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”.

6. Thus, the Division Bench, in the matter where the persons like the petitioner were made to deposit or had deposited the money even before adjudication of his liability to pay the tax, held that such payment cannot be treated as a voluntary payment, particularly when the payment was made on the very date when the petitioner’s premises was visited by the revenue officials.

7. In the present case, the petitioner’s premises were visited by the respondent no.1 on 1.11.2023. The search continued till 2.30 hours of 2.11.2023. The petitioner paid the alleged liability of tax and penalty at 00.46 hours. Thus, pending search proceeding, the petitioner is said to have voluntarily deposited the tax liability amounting to ₹.16 Lacs approximately and penalty of equal amount.

8. The another order which is relevant is of Gujarat High Court in the case of *M/s. Bhumi Associate .vs. Union of India through the Secretary*, which reads under :

1. We have heard all the learned counsel appearing for the writ applicants. We have also heard Mr. Devang Vyas, the learned Additional Solicitor General of India appearing for the respondents.

2. *The officers of the concerned department who were asked to join the video conference did join, but at a very later stage. They were unable to witness the discussion that took place between the Court and Mr. Vyas. We propose to pass an interim order issuing the following directions.*

"The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of notable circular/instructions.

(1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.

(2) Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.

(3) Facility of filing complaint/grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.

(4) If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer."

3. *Mr. Devang Vyas, the learned Additional Solicitor General of India has taken the pains to address this Court from the hospital room. Mr. Vyas is not well and has been hospitalized. Mr. Vyas may respond day after tomorrow to the aforesaid directions, which we propose to issue. We direct all officers to once again join the video conference day-after tomorrow, but this time, they should join well in time.*

Post all the matters on 18/02/2021 on top of the board.

9. As could be seen, the directions are given that no recovery should be made during the search/inspection proceeding under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017, which is *pari materia* Section 67 of the Central/Maharashtra Goods and Services Tax Act, 2017. More particularly, the Gujarat High Court said that even if the assessee comes forward to make voluntary payment, he should be asked/advised to file/pay such payment on the next day, after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.

10. When enquired with Mr. Maheshwari, the learned counsel for respondent nos.1, 3 and 5 to 7, as to whether, the petitioner was asked/advised to submit Form DRC-03 and to make payment in terms of these directions, he seeks time to take instructions.

11. We may note here that the judgment of Gujarat High Court has been filed by the petitioner as Annexure-'O' to the petition. The respondents, particularly, respondent no.1, in his reply, which he filed on three different occasions, has not uttered a word, as to whether, such instructions/advise was given to the petitioner. Having not said anything in reply, there appears no reason to believe/presume that respondent no.1 had instructed/advised the petitioner to make payment on next date. What is more annoying is that the respondents have made no effort to refund the amount to the petitioner, if he has mistakenly or voluntarily paid the amount, which otherwise was not payable. Further the directions issued by the Gujarat High Court under clause (3) and (4) have been also not complied with. The respondents have taken a stand that the petitioner raised plea of coercive payment only in December-2024, however, we did not find in the reply or otherwise that the petitioner was facilitated to file complaint/grievance after the end of such proceedings, may be because the respondents' case is that the petitioner had voluntarily deposited the amount.

12. We will consider these lapses in due course, but prior thereto, we afford one more opportunity to the respondents to take corrective steps, if the petitioner is otherwise entitled for the refund.

13. The respondents shall also go through the judgment of *High Court of Delhi in the case of M/s. Vallabh Textiles .vs. Senior Intelligence Officer and others* on this point and take corrective steps.

14, Place this matter for further consideration on **27.3.2026**.

(JUDGE)

(JUDGE)