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Search Authorisation Cannot Be a Volley of Fire and DIN Once Generated Must Be Shared with the Noticee

The Hon'ble Madras High Court in *M/s. Bhima Enterprises v. The Principal Chief Commissioner of GST & Central Excise & Ors. [W.P.(MD) No. 9040 of 2024 dated August 05, 2026]* held that the search conducted on the strength of an authorisation in Form GST INS-01 issued without a Document Identification Number ("**DIN**") was "not above board" and that the sum of Rs. 32,62,640/- collected during the course of the search was not a voluntary payment under Section 74(5) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**").

The Court laid down that the power to inspect is distinct from the power to search and seize and the authorisation must specifically bear out the nature of the power conferred, that a DIN subsequently generated within the prescribed period of 15 days must necessarily be communicated to the noticee, and that any payment made during search must be preceded by a written self-ascertainment of liability in the assessee's own words and acknowledged in Form GST DRC-04, failing which it cannot be regarded as voluntary. However, since the Assessee had earlier obtained release of the seized goods by pleading that the tax stood paid, the Court refrained from quashing the authorisation and instead directed fresh assessment proceedings, with the question of refund to abide by the outcome thereof.

Facts:

M/s. Bhima Enterprises ("**the Petitioner**") is a partnership firm engaged in the manufacture and wholesale of jewellery. On August 15, 2023, the Joint Commissioner, Office of the Central GST & Excise, Tirunelveli Division ("**the Respondent**") issued an authorisation in Form GST INS-01 under Section 67(2) of the CGST Act to the jurisdictional Assistant Commissioner. The authorisation did not bear a DIN and carried an endorsement at its foot stating that due to technical difficulties in generating the DIN, the inspection warrant was being issued without DIN and the same would be generated later. Although stated to be issued under Section 67(2),

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the document was described at its foot as an “Inspection warrant” and recited all the circumstances contemplated under Section 67(1) of the CGST Act.

Pursuant thereto, a surprise search was conducted at the Petitioner’s premises on August 16, 2023, wherein the officers seized gold ornaments weighing 3808.386 grams valued at Rs. 2,22,98,100/- and gold bullion weighing 5478.940 grams valued at Rs. 3,20,79,193/- on the ground that the excess stock was not reflected in the books of account. The seizure was recorded in Form GST INS-02 dated August 16, 2023 and a seizure memo was issued. During the course of the search, the Petitioner paid a sum of Rs. 32,62,640/- in two instalments, i.e., Rs. 13,37,888/- on August 16, 2023 and Rs. 19,24,752/- on August 17, 2023, through Form GST DRC-03, which reflected payment of 100% penalty. The DIN was subsequently generated on August 25, 2023 but was admittedly never communicated to the Petitioner, and no record of the technical difficulty was maintained in the departmental file.

The Petitioner had earlier filed **W.P.(MD) No. 23502 of 2023** challenging the seizure order and seeking release of the goods, wherein vide order dated September 26, 2023, the goods were directed to be released without execution of bond or furnishing of security since the Petitioner had already paid the applicable tax and penalty. The seizure order itself was not set aside in the said proceedings. Thereafter, the Petitioner continued to be summoned repeatedly by the Department, which took the stand that further investigation revealed tax evasion exceeding Rs. 5 crores.

The Petitioner filed the present writ petition seeking to quash the authorisation dated August 15, 2023 and for refund of Rs. 32,62,640/- with interest along with return of the original documents. The Petitioner contended that the search was *non-est* for want of DIN; that though the CBIC circulars do not expressly require communication of DIN to the taxpayer, such requirement must be read into them to avoid substantial prejudice, placing reliance on **Pradeep Goyal v. Union of India [(2023) 1 SCC 566]**; that what was issued was merely an

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authorisation to inspect and not to search or seize; and that the payment was extracted under coercion.

The Respondent contended that credible information of tax evasion had been received and the surprise search had exposed the same; that it is not necessary for the authorisation to bear a DIN so long as it is generated within 15 days, which was done; that there is no requirement to share the DIN with the assessee and hence no prejudice was caused; that the payment was voluntarily made after the Petitioner was confronted with the discrepancies; that the Petitioner, having obtained release of the goods by projecting that the tax liability stood discharged, cannot blow hot and cold and is estopped from seeking refund; and that any irregularity on the part of the officials would not vitiate the process, placing reliance on **Pooran Mal v. Director of Inspection [(1974) 93 ITR 505 (SC)]** and other decisions.

Issues:

1. Whether the powers of inspection, search and seizure under Section 67 of the CGST Act are distinct, and whether an authorisation in Form GST INS-01 which does not specifically bear out the nature of the power conferred is valid?
2. Whether display of DIN on the search authorisation is mandatory, and whether a DIN subsequently generated within the prescribed period of 15 days is required to be communicated to the noticee?
3. Whether the amount of Rs. 32,62,640/- paid during the course of the search can be treated as a voluntary payment under Section 74(5) of the CGST Act, and whether the Petitioner is entitled to refund thereof?

Held:

The Hon'ble Madras High Court in **W.P.(MD) No. 9040 of 2024** held as under:

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- **Observed that**, inspection under Section 67(1), and search and seizure under Section 67(2) of the CGST Act are conceptually distinct acts though one may closely follow the other, as delineated by the Division Bench in *Shri Ramakrishnan Srikishan Jhaver v. Commissioner of Commercial Taxes* [(1965) 57 ITR 664]; a mere power of inspection does not carry with it a power to seize. The proper officer cannot invoke these powers arbitrarily and “reasons to believe” is a condition precedent — the belief must be held in good faith, must be founded upon information and not mere suspicion, the reasons must exist on record, and the existence of the belief and the reasons therefor are justiciable, as held in *Calcutta Discount Co. Ltd. v. ITO* [(1961) 41 ITR 191 (SC)], *Aslam Mohamed Merchant v. Competent Authority* [(2008) 14 SCC 186] and *ITO v. Lakhmani Mewal Das* [(1976) 103 ITR 437 (SC)].
- **Observed that**, the impugned authorisation was a “jumbled up piece” — stated to be issued under Section 67(2) and therefore capable of being only a search warrant, yet described at its foot as an inspection warrant and reciting all the circumstances envisaged in Section 67(1); the authority was not clear whether goods had been secreted or documents stashed away, or whether they were at the business premises or the residence. Form GST INS-01 being a composite form, the authority must do the necessary editing while issuing an inspection warrant or a search warrant, which alone would indicate application of mind. A statutory authorisation “cannot be a volley of fire hoping at least one bullet will hit the mark; it has to be more like a laser beam”, and mechanical repetition of the statutory language defeats the very purpose of incorporating safeguards in the statute.
- **Noted that**, Circular No. 122/41/2019-GST dated November 05, 2019, issued under Section 168(1) of the CGST Act read with Section 37B of the Central Excise Act, 1944, mandates that no search authorisation, summons, arrest memo, inspection notice or letter issued in the course of any enquiry shall be issued without a computer-generated DIN quoted prominently in the body of the communication, and such circular is binding

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on the Department in terms of *K.P. Varghese v. ITO* [(1981) 4 SCC 173]. A communication without DIN which is not covered by the exceptions is to be treated as void; even where the exception of technical difficulty or acute urgency is invoked, reasons must be recorded in writing in the file, the communication must expressly state that it has been issued without DIN, and the omission must be regularised by generating the DIN within 15 days after ratification by the superior officer.

- **Held that**, the plea of “technical glitches” is a convenient fig leaf and parrot-like repetition of the phrase contained in the circular will not immunise the act of the authority from judicial review. The nature of the technical difficulty experienced and the attempt made to generate the DIN must be set out in the file contemporaneously, and the official concerned must send a mail to his immediate superior recording that his attempt to generate the DIN was in vain; absent such contemporaneous communication, the Court will be reluctant to take the stand of the Department at its face value. No stand of an official can be taken as an axiom, and the burden lies on him to show that he is entitled to invoke the exception set out in the circular.
- **Held that**, although the circular may not expressly require the Department to furnish the subsequently generated DIN post-inspection, on an overall reading of the circular, a DIN generated within the 15-day period must necessarily be shared with the noticee. The very purpose of introducing DIN is to ensure transparency and to provide the recipient a digital facility to verify the genuineness of the communication, which can be done only by entering the DIN on the portal; by denying the DIN, the noticee is disabled from verifying its validity and the safeguard is rendered illusory. Circular No. 249/06/2025-GST dated June 09, 2025 recognising a verifiable Reference Number (RFN) in portal-based communications, and Circular No. 23/2025-Customs dated September 23, 2025, have no bearing on the present proceedings.

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- **Noted that**, in the present case, the technical difficulty was not recorded in any file, no contemporaneous proof was produced before the Court, and the DIN generated on August 25, 2023 was not shared with the Petitioner. It is not for the Department to contend that post-intimation of the DIN would serve no purpose; when a safeguard has been put in place to check arbitrariness, it is the duty of the officials concerned to strictly adhere to the same.
- **Held that**, on the question of voluntariness, relying on *Bhumi Associates v. Union of India* [2021 (2) TMI 701 (Guj.)], *Vallabh Textiles v. Senior Intelligence Officer* [2022 SCC OnLine Del 4508], *ATR Malleable Casting (P) Ltd. v. Inspector of Central Taxes* [(2024) 130 GSTR 127 (Cal.)], *Shri Nandhi Dhall Mills India (P) Ltd. v. SIO, DRI* [2021 (4) TMI 363 (Mad.)] and *Radhika Agarwal v. Union of India* [(2025) 6 SCC 545], the Revenue does not have the power to recover tax during search proceedings. Section 74(5) of the CGST Act merely confers an option on the assessee and does not confer any right on the tax authorities to compel or extract tax by threat or coercion; recovery can be made under Section 79 only after issuance of notice and confirmation of demand by way of an adjudication order, and any amount collected without the authority of law is liable to be refunded in view of Article 265 of the Constitution of India. Where conflicting versions are possible, a commonsensical approach has to be adopted and the whole issue boils down to the voluntariness of the payment.
- **Held that**, adding a further safeguard to the directions in *Bhumi Associates*, to ensure that a payment made as an immediate fall-out of inspection or search is voluntary, the assessee must inform the authority in writing, before making payment under Section 74(5), that he has made a self-ascertainment of his liability, akin to a self-assessment return under Section 39 of the CGST Act, and the basis of such ascertainment must be brought out in the assessee's own language and words; once such a statement is made, the assessee cannot resile from the stand so taken. Mere furnishing of a challan or description of the payment as "voluntary" is insufficient since it does not disclose

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whether the payment was made towards the particular tax liability in question, and the payment must be duly acknowledged in Form GST DRC-04 as contemplated under Rule 142(2) of the CGST Rules, 2017. The officials are further obliged to inform the assessee in writing of his statutory right under Section 67(6) to obtain provisional release of the seized goods on execution of bond and furnishing of security, and there must be material on record to show that the assessee was so apprised before payment, leaving it to the assessee to make a conscious choice. Any payment not made in the manner laid down would be treated as involuntary and the assessee can seek refund of the same.

- **Noted that**, Form GST DRC-03 indicated payment of 100% penalty whereas Section 74(5) contemplates a penalty of only 15% of the tax; this itself runs counter to the statute and, in any event, the assessee could not have been made to pay 100% penalty.
- **Held that**, the search conducted by the Respondents was not in tune with the statutory procedure and was “not above board”; the Department, on the strength of an illegal warrant, descended on the Petitioner’s premises and seized jewellery and gold bullion, the official informed the Petitioner that Rs. 32,62,640/- had to be paid towards tax and penalty, and the Petitioner was made to make the payment. The payment was, therefore, not voluntary and the Petitioner is entitled to seek refund.
- **Observed that**, however, the Court was unable to invalidate the search of August 16, 2023 in view of the Petitioner’s own conduct, having obtained release of the goods in W.P.(MD) No. 23502 of 2023 by pleading that the entire tax liability stood discharged; the seizure order was not set aside therein and, inspection and search being stages anterior to seizure, once the seizure has been implicitly upheld, the search that preceded it cannot be nullified. The legality of the search ought to have been questioned while seeking provisional release, and what the Petitioner failed to achieve in the earlier writ cannot be achieved indirectly by nullifying the authorisation. A

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litigant who comes to Court must come with clean hands, but the Department is to be judged on the same scale and the bar set for the Department is higher than that for the taxpayer; the Department cannot be allowed to succeed solely by taking advantage of the conduct of the assessee. Where it is a case of the pot calling the kettle black, the Court is justified in striking a balance, since showing the Petitioner the door would lead to unjust enrichment of the other side.

- **Directed that**, the Respondents shall initiate fresh assessment proceedings confined to the subject matter of the writ petition, by issuing notice to the Petitioner and holding proper enquiry in adherence to the timelines provided in the statute; the period from August 15, 2023 till the date of receipt of the certified copy of the order shall stand excluded for the purpose of limitation; and whether the amount in question is to be refunded to the Petitioner or not shall abide by the outcome of such assessment proceedings.
- **Summarised** the principles governing future proceedings under Section 67, viz., (a) the power to inspect is distinct from the power to search and to seize, and the authorisation in Form GST INS-01 must specifically bear out the nature of the power conferred — an authorisation to inspect by itself would not include the power to search and effect seizure; (b) the authorised officer must act strictly within the limits of the power conferred and cannot traverse beyond; (c) the proper officer must have “reasons to believe” that the circumstances set out in Section 67(1) or 67(2) exist, which is open to scrutiny in judicial review; (d) display of DIN on the communication, summons or notice is mandatory, and if it could not be displayed, the reasons must be expressly mentioned in the communication, recorded contemporaneously in the file and intimated by mail to the immediate superior, the burden being on the official; (e) the omission must be made good by generating the DIN within 15 days and, once generated, it should be shared with the noticee; (f) where goods are seized, the person searched must be informed in writing of his entitlement to provisional release on

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executing bond and furnishing security; (g) payment under Section 74(5) must be in accordance with *Bhumi Associates*, must follow a written self-ascertainment communicated to the proper officer, and must be acknowledged in Form GST DRC-04; and (h) payment not in consonance with this procedure will not be treated as voluntary and the assessee can seek refund by filing a writ petition.

Hence, the writ petition was disposed of by remanding the matter to the Department for fresh assessment proceedings, with the refund claim to abide by the outcome thereof.

Our Comments:

Section 67 of the CGST Act titled “Power of inspection, search and seizure” is the fountainhead of the Department’s investigative powers under GST. Sub-section (1) empowers a proper officer not below the rank of Joint Commissioner, where he has “reasons to believe” that a taxable person has suppressed any transaction or stock, claimed excess input tax credit or contravened the Act to evade tax, to authorise in writing any other officer to *inspect* the places of business. Sub-section (2) is a distinct and higher power — where the proper officer, either pursuant to an inspection or otherwise, has reasons to believe that goods liable to confiscation or documents, books or things useful for any proceedings are *secreted* in any place, he may authorise any officer to *search and seize* such goods, documents or things. Sub-section (6) mandates that seized goods shall be released on a provisional basis upon execution of a bond and furnishing of security, or on payment of applicable tax, interest and penalty. Sub-section (10) makes the provisions of the Code of Criminal Procedure, 1973 relating to search and seizure applicable, and Rule 139 of the CGST Rules, 2017 prescribes Form GST INS-01 for the authorisation and Form GST INS-02 for the order of seizure. Since Form GST INS-01 is a composite form covering both inspection and search, the judgment rightly insists that the authorising officer strike out the inapplicable portions so that the warrant is a “laser beam” and not a “volley of fire” — a requirement that traces its lineage to the well-settled position that

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“reasons to believe” must be founded on tangible material and not on mere suspicion or a mechanical reproduction of the statutory language.

Section 74(5) of the CGST Act provides that the person chargeable with tax may, before service of notice under Section 74(1), pay the amount of tax along with interest payable under Section 50 and a penalty equivalent to fifteen per cent of such tax 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. Rule 142(2) of the CGST Rules requires such intimation in Form GST DRC-03 and an acknowledgement by the proper officer in Form GST DRC-04. Section 79 permits recovery only after the amount becomes payable pursuant to an adjudication order. The scheme, therefore, contemplates a self-driven, pre-notice option in the hands of the taxpayer and not a recovery mechanism in the hands of the search party. For periods from FY 2024-25 onwards, the pari materia provision is Section 74A(8) of the CGST Act, inserted by the Finance (No. 2) Act, 2024 with effect from November 01, 2024, which preserves the same 15% penalty for pre-notice payment in cases involving fraud, wilful misstatement or suppression. The Court’s observation that a DRC-03 reflecting 100% penalty is itself “counter to the statute” is a useful marker of involuntariness — no taxpayer exercising a genuine option would pay a penalty six-and-a-half times the statutory quantum.

The DIN regime flows from Circular No. 122/41/2019-GST dated November 05, 2019, which mandated electronic generation of DIN for search authorisations, summons, arrest memos, inspection notices and letters issued in the course of enquiry, and Circular No. 128/47/2019-GST dated December 23, 2019, which extended the requirement to all communications including e-mails. Both circulars declare that a communication without DIN, which is not covered by the exceptions of technical difficulty or acute urgency, shall be treated as invalid and deemed never to have been issued, and prescribe regularisation within 15 working days. The Hon’ble Supreme Court in *Pradeep Goyal v. Union of India* [(2023) 1 SCC 566] endorsed the DIN system as furthering transparency and accountability in tax administration and directed the GST Council to consider its implementation by the States. Subsequently, Circular No.

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249/06/2025-GST dated June 09, 2025 clarified that where a verifiable Reference Number (RFN) is generated for a document uploaded on the common portal under Section 169, a DIN need not be separately quoted, and Circular No. 23/2025-Customs dated September 23, 2025 reiterated that the DIN continues to be mandatory for communications not dispatched through the e-Office public option. Search authorisations, summons and arrest memos issued offline during investigation continue to be squarely covered by the DIN mandate, and the present judgment now adds a judicially recognised obligation of post-facto communication of the DIN to the noticee, which is not found in the text of the circulars.

On the issue of coercive recovery during search, the judgment sits within a consistent line of authority. The Hon'ble Gujarat High Court in ***Bhumi Associates v. Union of India [2021 (2) TMI 701]*** directed that no recovery in any mode be made during search or inspection under Section 67 under any circumstances, that even a voluntary DRC-03 be filed only on the day after the search after the officers have left the premises, and that a grievance mechanism and disciplinary action be provided for. The CBIC gave effect to these directions through *Instruction No. 01/2022-23 [GST-Investigation] dated May 25, 2022*, clarifying that no situation can arise requiring "recovery" during search, inspection or investigation, while preserving the taxpayer's option of voluntary payment through DRC-03. The Hon'ble Delhi High Court in *Vallabh Textiles v. Senior Intelligence Officer [2022 SCC OnLine Del 4508]* held that the Gujarat directions are binding on the Revenue, that no "elbowroom" was made available to the assessee to seek legal advice and self-ascertain, and directed refund with interest; the same view was followed in *Lovelesh Singhal (Prop. Shivani Overseas) v. Commissioner, Delhi GST [Delhi High Court, W.P.(C) No. 16353 of 2022]* and by the Hon'ble Calcutta High Court in *ATR Malleable Casting (P) Ltd. v. Inspector of Central Taxes [(2024) 130 GSTR 127]*. The Hon'ble Punjab and Haryana High Court in *Modern Insecticides Ltd. v. Commissioner, CGST* likewise directed refund of amounts deposited during search on finding that the deposit was not on account of self-ascertainment. Most authoritatively, the Hon'ble Supreme Court in *Radhika Agarwal v. Union of India [(2025) 6 SCC 545]*, while upholding the power of arrest under Section 69, held that Section 74(5) gives

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an option to the assessee and does not confer any right on the authorities to compel or extract tax by threatening arrest, and that an assessee from whom tax is collected under threat, force or coercion is entitled to move the Court for refund. The present judgment takes this jurisprudence a step further by prescribing that a written self-ascertainment in the assessee's own words must *precede* the payment and that the Department must place on record proof of having informed the assessee of the right to provisional release under Section 67(6).

On the consequence of a missing DIN, the position remains in flux. The Hon'ble Andhra Pradesh High Court in *Novelty Reddy and Reddy Motors Pvt. Ltd. v. Assistant Commissioner* [2025 (7) TMI 1922] set aside an assessment order flowing from a search warrant without DIN, holding that DIN must appear not only on the warrant but on all subsequent proceedings; the Madras High Court has, however, noted that this order stands stayed by the Hon'ble Supreme Court in SLP(C) No. 28105 of 2025. Earlier decisions of the same High Court in *Cluster Enterprises v. Deputy Assistant Commissioner (ST)-2* and *Sai Manikanta Electrical Contractors v. Deputy Commissioner* had treated orders without DIN as invalid. It is also relevant to note the contrary strand of authority that an illegal search does not, by itself, render the evidence gathered unusable — the Hon'ble Supreme Court in *Pooran Mal v. Director of Inspection* [(1974) 93 ITR 505] held that material seized in an illegal search can still be relied upon, and the Madras High Court itself acknowledged in the present judgment that once tax evasion is discovered, Courts would be reluctant to restrain the authority from proceeding further merely because the conditions precedent for search were absent. The outcome in *Bhima Enterprises* — a finding of illegality coupled with a remand rather than an unconditional refund — is a direct product of this balance and of the Petitioner's own conduct in having obtained release of goods on the footing that tax was paid.

The practical takeaways for taxpayers facing a visit under Section 67 are clear. First, the authorisation in Form GST INS-01 should be carefully read on the spot to verify whether it authorises inspection or search, whether the DIN is displayed and, if not, whether the endorsement required by the circular is present — and a written request for the DIN should be

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made immediately thereafter. Second, no payment should be made on the day of the search; if the taxpayer chooses to pay, it should be done only after taking legal advice, on the basis of a written self-ascertainment in the taxpayer's own words filed with the proper officer, with penalty restricted to 15% under Section 74(5) or Section 74A(8), and an acknowledgement in Form GST DRC-04 should be insisted upon. Third, any objection to coercion should be recorded contemporaneously and a grievance lodged with the jurisdictional Principal Chief Commissioner in terms of Instruction No. 01/2022-23. Fourth, and most importantly in light of this judgment, the legality of the search must be challenged at the earliest, along with and not after, any application for provisional release of goods — a taxpayer who obtains release by pleading that tax has been paid will find it difficult to subsequently assail the search that led to that payment.

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