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By Nidhi, Advocate



Judgment No.: 110
Dt.: 13-04-2024



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Judgment Deals With

Section/Rule	Rule 142(2)
Authority	Bombay High Court
Case Name	Innovators Facade Systems Ltd. VS Assistant Additional Director General of GST
Dated	05 th March, 2024

Brief Facts of the Case:

The case of the petitioner is that he was forced to deposit Rs.2,50,00,000/- on 13.10.2022 that too at 3.30 a.m. It is petitioner's contention that the said amount was recovered by the authorities from the petitioner by coercion, hence, the petitioner is entitled to refund of the said amount, on the ground that this would amount to collection of the petitioner's amounts without any authority in law.

Findings & Decision of the Court:

It is difficult to accept the case of the petitioner that there was a coercion of the nature as alleged by the petitioner as petitioner's own letter dated 13.10.2022 states that Balance Tax payment scheduled will be given after 10 days. It, thus appears that not only the petitioner decided to voluntarily deposit an amount of Rs.2,50,00,000/-, but also, agreed that the "balance tax payment scheduled" would be made within 10 days. It also appears that the search and seizure operations revealed that an amount of more than Rs.5 crores was due and payable towards the outstanding tax which was very well realized by the petitioner. In reality or genuinely if the petitioner was to be coerced, as a prudent legal person would resort, the petitioner could have made complaints and/or representation on such actions of the officers, which in law can certainly be regarded as highhanded and illegal. However, the petitioner did not even whisper anything of such kind, in the several letters addressed to the authorities. **Such factual dispute as to whether any coercive methods were adopted by the authorities and that such amounts were deposited under duress and coercion certainly cannot be conclusively ascertained in the proceedings of a writ petition under Article 226 of the Constitution.** It is not unlikely that the assessee, to mitigate the circumstances and avoid legal proceedings being initiated against it, voluntarily deposited the tax amounts. Such position being taken by the assessee is not unknown to the tax jurisprudence. **Thus, any such amount voluntarily deposited, in such circumstances, cannot be categorized as a deposit under coercion.** In this regard, there cannot be a straight jacket or a blanket opinion which could, at all, be rendered by the Court as any action taken by the department is required to be tested on its own facts. Therefore, the petitioner's grievance of a coercive recovery cannot be accepted.

It was observed that **when an assessee comes before the Court invoking jurisdiction under Article 226 of the Constitution and that too making a serious grievance that the department had coerced the assessee to deposit the tax amounts, certainly as to whether it is genuinely a coercion or whether it was a voluntary deposit, is purely a disputed question of fact. Such question cannot be gone into and appreciated in the proceedings under Article 226 of the Constitution.** Considering the settled principles of law as laid down in catena of decisions, such exercise is not possible to be undertaken in the discretionary proceedings under Article 226 of the Constitution, albeit in a given case.