

# Collection of GST During Audit or Investigation is Refundable



This is to apprise you that the Hon'ble Madras High Court ('HC') in the case of ***Shri Nandhi Dhall Mills India Pvt. Ltd. v. DGGST, W.P. No. 5192 of 2020***, any collection of tax made during any audit or investigation shall be refunded to the taxpayer if demand is not determined. This is irrespective of the fact that the taxpayer accepted the demand or voluntarily deposited the amount during such audit or investigation.

## Facts

- The Department conducted search & seizure in the premise of the taxpayer.
- The taxpayer accepted the default in payment of tax liability and a scheme was agreed upon for payment of tax liability in instalments. The taxpayer paid first two instalments as agreed but later denied the continuation of scheme.
- The taxpayer contended that any amount collected during investigation should be refunded in the absence of any determination of demand against the taxpayer.

## High Court Decision

- The Hon'ble HC held that no collection can be insisted upon prior to a final determination of liability being made.

- Further, the Court analysed that Section 74(5) provides an opportunity to an assessee to pay tax, interest, and penalty liability prior to the issuance of a show cause notice on acceptance in the form of either self-ascertainment or an ascertainment by the proper officer.
- HC held that amount paid during investigation can neither be termed as self-assessment nor as ascertainment of liability by authorities.

#### **GABA & CO. | Remarks**

- *There has been number of cases where taxpayers accept and pay the liability during audit or investigation, but no demand order is issued by the authorities thereafter. In such cases, the HC decision would help taxpayer to claim back such amount paid.*

#### **Disclaimer:**

*The views expressed in the update are strictly personal, based on our understanding of the underlying law. We are not responsible for any injury, loss or cost arising to any person who refers this update and acts or refrains from any act accordingly. We would suggest that a detailed legal advice must be sought before relying on this update.*