

Can a GST Officer Physically Abuse Taxpayer?

Date: November 09,2020



Rajat Mohan, Senior Partner, AMRG & Associates

Writ Petition No.28268 of 2019 is finally disposed of by Hon'ble High court of Telengana [\[TS-962-HC-2020\(AP\)-NT\]](#) . Questions before the state's highest court were shocking, outrageous, and disgraceful for the entire GST wing. The precise question before the Hon'ble Court was "whether officials belonging to the GST Intelligence Department can resort to physical violence while conducting an interrogation of the petitioners and their employees in connection with proceedings under GST law?"

Reading this 38-page order is nerve-racking for every professional in the country. In this article, we will discuss all the important points mentioned in this case law and beyond.

Taxpayer is a Private Limited Company, filing its tax returns regularly. It was recognized as the highest GST payer for the State of Telangana within the TMT Steel Industry and was recognized as a 'Star Export House' under the Foreign Trade Policy of 2004 - 09 and 2009 - 14. Also, it has a Certificate of Appreciation by the Ministry of Finance, Central Board of Direct Taxes, recognizes him as a 'Silver Category Tax Payer'.

On 11 December 2019, DGGST officials conducted simultaneous raids on business units and residential houses without any prior intimation or show-cause notice. Petitioner, his relatives, and employees have alleged that all the phones were seized. During questioning, officials abused them with filthy language for not giving satisfactory replies and physically assaulted them repeatedly. It is contended that when petitioners were requesting not to resort to violence, officials aggravated assault on them and grievously hurt his leg of one of them. This person was unable to stand, and with the help of employees, he was rushed to the nearest hospital. Company employees made a police complaint by dialing phone number 100. Police Officials arrived at the office premises, but they refused to take any action at the tax official's insistence.

Tax officials contended that petitioners were not cooperating with the investigating agency. Preliminary investigation revealed tax evasion of INR 5 crores. Officials also stated that there is no bar in making enquiries under Section 70 of GST Act, 2017 in the night.

In this case, the court observed and recorded some crucial facts:

- Search on the several premises connected with the petitioners started from 8.30 am on 11 December, 2019 till the following day. Thereby entire night tax officers were present at the said premises and conducting search.
- Events that transpired during this period are conflicting versions. Typically, these disputed questions of fact are not to be gone into in a Writ proceeding under Article 226 of India's Constitution. But the court cannot ignore out patient discharge advice of the hospital, which reads "*assault today; injury to the left thigh; unable to walk and bear weight;.. blunt injury at left thigh*" and acknowledgment given by the Police that there was a call made by an employee to Phone No.100.
- Material on record prima-facie suggests a possibility of violence by DGGST officials.
- Authorities under the CGST Act, 2017 are not to be treated as police officials.
- DGGST officials cannot claim any immunity if they indulge in acts of physical violence against persons they suspect of being guilty of tax evasion.
- Protection against torture by State actors has been recognized as part of the right to life and liberty guaranteed by Article 21 of India's Constitution.
- Tax officials cannot interrogate the persons suspected of committing any tax evasion as per their sweet will, forcibly keeping them in their custody for an indefinite period.

Finally, the Hon'ble court held that:

- Tax officials shall not use any acts of violence or torture against petitioners or their employees in further

inquiry proceedings.

- Enquiry in the above proceedings shall not be handled by "THE" tax officer, and he shall not even participate in said enquiry. Proceedings of this case shall be transferred to another official.
- Any interrogation of the petitioner or their employees shall be between 10:30 a.m. and 05:00 p.m. on week days in the visible range of an advocate appointed by them, who shall not be in hearing range.
- Tax officials shall adhere to the CGST Act, 2017 in conducting search, investigation, or enquiry in relation to the alleged tax evasion by the petitioners.

Now the Moot question remains, can a tax officer physically abuse you during any investigation under GST laws? Legally answer is clear "NO". But practically this has happened in numerous cases, one of which has reached its logical end.

Any taxpayer or tax professional handling an investigation at DGGST office needs to be armored with facts, figures, and patience to withstand hours and hours mental torture. Tax intelligence agencies may or may not be well versed with legal provisions, but one thing they are well versed with which is "Limits of a human body". They will take the taxpayer, his family, and employees to the end of human limits and then pressurize him to pay tax.

This case is an eye-opener for the country's government and senior bureaucratic policymakers who are splurging taxpayer's money on new digital initiatives to make the tax assessments faceless and independent. A data shall be prepared for the last 20 years:

- How many enquiries did DGGST/ DGCEI conducted?
- How many petitioners or their employees have made a formal complaint of physical or mental torture by the officials?
- How many cases have been adjudicated by the DGGST / DGCEI officials in 20 years?
- How many petitioners have filed a writ immediately following the investigation by DGGST/ DGCEI alleging mental pressure to pay tax?
- How many investigations happened outside the business hours?
- DGGST/ DGCEI officials given any annul/ semi-annual collection targets formally or informally?

Way forward is very clear, a full-scale enquiry shall be ordered for the entire DGGST department, report of which should be presented in both the houses of parliament. Enquiry should be in and around the manner of conducting search and enquiry by the officials of this department. This report would bring about specific hard-hitting facts on the paper for which our democratic structure will take stern action for the greater good.