

# INSPECTION SEARCH AND SEIZURE UNDER GST LAW



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GST officer thoroughly checks the GST return of a particular taxpayer based on certain risk parameters to verify its correctness. If he finds any errors, he will issue a scrutiny notice Form GST ASMT 10 seeking an explanation within a period of 30 days from the date of the Notice or extended time. Where possible, Quantify the amount of tax and any other amount payable. On receipt of the Notice Registered person may accept the discrepancies & pay tax and interest or furnish an explanation for the discrepancies in Form ASMT 11. Where the explanation furnished by Assessee is acceptable to Proper Officer (PO), PO shall inform accordingly in GST ASMT-12, and no further action is taken, but If PO is not satisfied with the reply / Explanation of Assessee, In such case, PO can't pass assessment order raising demand but he may recourse to any of the provision like audit u/s 65, Special audit u/s 66, or Inspection, Search & Seizure u/s 67 or Proceed to determine tax and other dues u/s 73 (Non-fraud case) or u/s 74 ( Fraud case).

The Commissioner or an Authorized Officer can purchase any goods and/or services from a taxable person. This will be done to check the issue of Tax Invoices, whether they are maintained correctly, and whether the GST amount is clearly displayed. When the goods are returned, the amount will have to be refunded by the taxable person, and the sales invoice will be canceled. Provision has been made in subsection 12 of Section 67 of the CGST Act.

The GST Act 2017 has given enormous power

in the hand of GST Officers, even to arrest the person evading tax or claiming fake input tax or in case of fraud. In the following article will briefly discuss the Provisions of Inspection, Search & Seizure under Section 67 of the CGST Act.



The term '**Inspection**' is the act of examining something, often closely, Search denotes an action of Government agencies to go, look through or examine carefully a place, area, person, object etc. In order to find something concealed or for the purpose of discovering evidence of concealment of GST. But the search of a person or vehicle or premises etc, can only be done under the proper and valid authority of law. Seize means to take possession of goods through legal process, contrary to the wishes of the owner or to take forcible possession.

Section 67 of the CGST Act gives the power of Inspection, Search and Seizure to Proper Officer. In Circular No. 3/3/2017 – GST dated 05 July 17, Proper officer has been defined under the Central

Goods and Services Tax Act, 2017 or the rules made there under. For the function under section 67 of the CGST Act, proper officer is designated as an officer, not below the rank of Joint Commissioner. So any officer below the rank of Joint Commissioner does not have any power under section 67 until he/she was authorized by a Proper officer.

If the Proper Officer has reasons to believe that the person concerned has suppressed any transaction of supply or stock of goods in hand, claimed excess input tax credit, contravened any provision of the CGST/SGST Act to evade tax, A transporter or warehouse owner has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax, he may authorize in writing to any other Officer of CGST/SGST to inspect any places of business of such taxable person. Such written authority by a Proper Officer to conduct a search is generally called a search warrant. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the details like the violation under the Act, the premise to be searched, the name and designation of the person authorized for search, the name of the issuing officer with full designation along with his round seal, date and place of issue, serial number of the search warrant, period of validity i.e. a day or two days etc. Section 67(10) of the CGST/SGST Act prescribes that searches must be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973. Section 100 of the Code of Criminal Procedure describes the procedure for search.

### Reason to Believe

As per the provision of Search and Seizure under GST Law, a Proper Officer can use his power only if he has reasons to believe that the person concerned has contravened any GST law provision, so here the question arises what is “Reason to Believe”? Before issuing authorization for any Search, the Proper Officer has to disclose the material on which his belief was formed. Though it is not required to record invariably in each case. However, it would be better if the materials/information etc, are recorded before the issue of a Search Warrant or before conducting a search.

In the case of Delhi HC in R.J. Trading Co Vs. Commissioner of CGST, Delhi North [ W.P.(C) No 4847 of 2021 dated 20.07.21], it was held that no search can be conducted by the Revenue Dept where the jurisdiction ingredients are

absent. Further reason to believe does not carry some connotation as a reason to suspect, and the standard of belief is that of a reasonable and honest person and not one based on mere suspicion.

Similarly, in the case of “Pukhraj v D.R.Kohali, the Supreme Court observed that When we are dealing with a question as to whether the belief in the mind of the officer who effected the seizure was reasonable or not, we are not sitting in appeal over the decision of the said officer. All that we can consider is whether there is ground which prima facie justifies the said reasonable belief.”

Hon’ble Supreme Court in Sheo Nath Singh v. Appellate Asstt. CIT [1971] 82 ITR 147/AIR 1971 SC 2451 held that the Court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials, although the sufficiency of the reasons for the belief cannot be investigated by the Court.



### **Instructions No. 01/20-21 (GST Investigation) Dated 02.02.21** to be followed during Search Operation

It is as per Instructions No. 01/20-21 (GST Investigation) Dated 02.02.21, the following principles should be observed during the Search:

- A valid and justifiable reason for authorizing a search - No search of premises should be carried out without a valid and justifiable reason for authorizing a search warrant issued by the Competent Authority.
- The Search of Residence- In case of a search of residence, There should invariably be a lady officer accompanying the search team



- No Coercive Measure against Family Members -In the case of Pares Nathalal Chauhan vs the State of Gujrat ( 2020(32) G.S.T.L. 342 (Guj.)) Gujarat HC held that Sec 67(2) does not empower the officer concerned to record the statement of family members through force or coercion or to record their conversation in their mobile phone. It is not permissible for the authorized officer to use coercive measures against family members to find out the whereabouts of the taxable person.
- Circular 122 /2019 states that communication from the CBIC offices for 'Search authorization, Summons, Arrest Memo, Inspection Notices and letters issued in the course of enquiry shall mandatorily bear electronically generated "Document Identification Number (DIN)".
- The name and premises of such a person mentioned on the search warrant can only be searched.
- The Officers, before starting the search, should disclose their identity by showing their identity cards to the person in charge of the premises.
- The Search Warrant should be executed before the start of the search by showing the same to the person in charge of the premises, and his signature should be taken on the body of the Search Warrant in token of having seen the same. The signatures of at least two witnesses should also be taken on the body of the Search Warrant.
- The search should be made in the presence of at least two independent witnesses of the locality. If no such inhabitants are available /willing, the inhabitants of any other locality should be asked to be witnesses to the Search. The witnesses should be briefed about the purpose of the Search.
- Before the start of the Search proceedings, the team of officers conducting the search and the accompanying witnesses should offer themselves for their personal search to the person in charge of the premises being searched. Similarly, after the completion of the Search, all the officers and the witnesses should again offer themselves for their personal search.
- After the Search is over, the Search Warrant duly executed should be returned in original to the issuing

Officer with a report regarding the outcome of the Search. The names of the Officers who participated in the Search may also be written on the reverse of the Search Warrant.

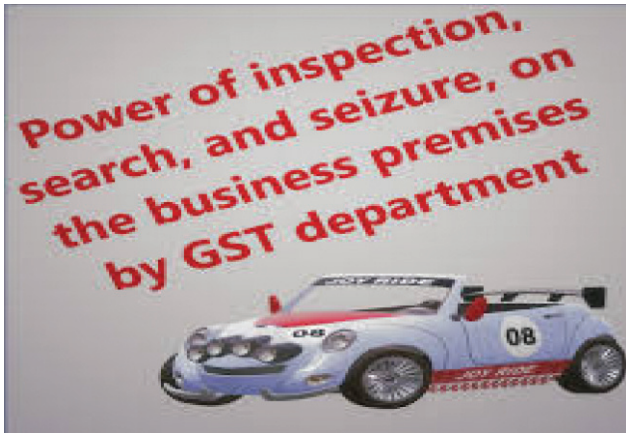
- The issuing Authority of Search Warrant should maintain a register of records of Search Warrant issued and returned, and used Search Warrants should be kept in records.
- A Panchnama / Mahazar of the proceedings of the Search should necessarily be prepared on the spot. A list of all goods, and documents recovered and seized/detained should be prepared and annexed to the Panchnama/Mahazar. The Panchnama / Mahazar and the list of goods/ documents seized/detained should invariably be signed by the witnesses, the in-charge/ owner of the premises before whom the search is conducted and also by the officer(s) duly authorized for conducting the search.
- A copy of the Panchnama / Mahazar, along with its annexure, should be given to the person in-charge/ owner of the premises being searched under acknowledgment.

### **Confiscation & Seizure of Goods (Sec 67(2) & Rule 139**

An Officer carrying out a search has the Power to Search for and seize goods, documents, books, or things which, in his opinion, shall be useful for or relevant to any proceedings under GST Law. Goods become liable to confiscation when a person supplies or receives any goods in contravention of any of the provisions of the GST Act or Rules made there under leading to evasion of tax, If it is not practicable to seize items, the authorized officer may serve an order of prohibition in Form GST INS- 03 on the owner/custodian of the goods for not removing, parting with or otherwise dealing with goods except with prior permission of such officer.

Here it is a point to note that the expression "things" occurring in Sec 67(2) of the CGST Act would cover cash also. GST authorities are empowered to seize cash from assessee, and unless until the investigation is carried out and the matter is finally adjudicated, the question of releasing cash does not arise. It was held in the case of Madhya Pradesh HC in Kanishka Matta vs UOI ( Writ petition no.8204/2020 dated 26.08.20)

But In the Recent case of ARVIND GOYAL CA Vs UNION OF INDIA & ORS. (Delhi High Court),W.P.(C) 12499/2021, A Division Bench of the Delhi High Court recently directed to return the amount taken in possession by GST Officers with interest, noting that the GST Officers cannot take possession of cash found during the Search, under Goods and Services Tax Act, 2017 During the course of the Search, at the residence of the petitioners and directed the petitioner to submit the bank guarantee for release of currency.



#### Power to seal or break the Premises

During the Search, the Officer has the power to break and open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out a Search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it is denied.

In the case of Singhi Buildtech Pvt Ltd Vs Commissioner of Commercial Tax ( 2019 (22) GSTL.10(KAR)), Karnataka HC held that the Officer shall not seal premises unnecessarily.

In the case of M/s Napin Impex Pvt Ltd Vs Commissioner of DGST, Delhi & Ors, (W.P. ( C ) 10287/ 2018 Dated 28.09.18 Delhi HC Directed to hand over of premises sealed for over a month, sealing cannot assume "indefinite" life.

In the case of Anopsinh Kiritsinh Sarvaiya Vs State of Gujarat ( R/Special application No. 2705 of 2020 dated 06.02.2020, Gujarat HC held that GST Authorities should be concerned with goods or other articles stored in godown, which may be liable to confiscation and there was no point in keeping godown closed with a seal affixed on it.

Period of Seize and release of Documents , Books or Things etc

As per the 2nd provision of sec 67(2), Seized Documents, Books or things will be retained by the Officer only for the period necessary for examination and for any inquiry or proceeding under GST law, In the case of Universal Dyechem Pvt Ltd vs UOI ( 2021(46) G.S.TL.119(Guj)) Gujarat HC held that seized documents, books or things produced by a taxable person which have not been relied upon for the issue of notice shall be returned within 30 days of issue of SCN. As per section 67(7), seized goods shall be returned within 6 months of such seizure if no notice is issued within 6 months to the person from whose possession they were seized, period of 6 months may be extended by the proper officer for a further period not exceeding 6 months if sufficient cause being shown.

#### **Photo Copy of Seized Documents**

A taxable person shall be entitled to make copies thereof or take extracts therefrom of any documents seized in the presence of an authorized Officer at such time and place decided by the Officer, but GST Officer can deny making copies of documents where the

Proper Officer is of the opinion that making such copies or taking such extracts may prejudicially affect the investigation as mentioned in Section 67(5). But most of the cases like High Ground Enterprises Ltd Vs UOI, Harshvadan Rajnikant Trivedi Vs UOI AND Manish Lalit Kumar Bavishi Vs Additional Director General GST Authorities directed to make available the copied of seized documents.

As per section 67(6) of GST Act, The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be. If a taxable person executes a bond for the value of goods in Form GST INS-04 and furnishes security in the form of a Bank Guarantee equivalent to the amount of tax, interest and penalty payable or pays applicable tax, interest and penalty payable , seized goods can be released on provisional basis but if the taxable person fails to produce the goods on appointed date and place indicated by PO Security shall be en-cashed and adjusted against the tax, Interest and penalty and fine if any payable in respect of such goods.

In the case of the State of U.P. Vs Kay Pan Fragrance Pvt Ltd ( Civil Appeal No 8941, 8942 and 8944 of 2019 dated 22 Nov 19, Hon'ble SC held that proper mechanism already provided for in the CGST Act and the rules must be followed for release on a provisional basis upon execution of a bond and furnishing of security , in such manner and of such quantum (even upto the total value of goods involved), respectively as may be prescribed or on payment of applicable taxes, interest and penalty maybe as the case may be as predicated in section 67(6) of the Act.

In the case of Quality Enterprise Vs Assistant state tax officer (W.P.(C) No 18212 of 2020 dated 18.09.20, Kerala HC Held that the Bank Guarantee furnished before the department shall not be en-cashed until orders are passed by the first Appellate Authority as directed and the order communicated to the petitioner.



Seizure and Disposal of goods having perishable or Hazardous Nature

As per section 67(8) the Proper Office may dispose of the goods as soon as may be after its seizure under section 67(2) of the CGST Act in the following circumstances

- I. If there is a constraint on the storage space of the goods or
- II. Goods are of perishable or Hazardous nature
- III. The value of goods depreciates with the passage of time or
- IV. Any other relevant reason for not keeping the goods after the seizure

Notification No. 27/2018-Central Tax dated 13.06.2018 has Notifies categories of such goods which shall, as soon as may be after its seizure under section 67(2) of the CGST Act, be disposed of by the Proper Officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods. In this notification total of 17 categories of goods are specified. Inventory of such goods to be signed and maintained by the person from whose custody such goods are seized.

As per Rule of CGST 141 (1), Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.

141(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the proper officer may dispose of such goods or things, and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

### ***CAN GST OFFICIALS FORCE FOR DEPOSIT OF GST AT THE TIME OF SEARCH AND SEIZURE***

GST Officials cannot force the Assessee to deposit the tax at the time of Search and Seizure proceedings. Even if they can't ask for a Post-dated cheque. Such kind of collection/recovery of tax is illegal, and the same is violative to Article 265 of the Constitution of India, which provides that no tax can be recovered without the authority of Law. In the case of M/s Remark Flour Mills Private Limited V State of Gujrat (R/Special Civil Application No 4835/2018) has slammed the practice of collecting post-dated cheques during Inspection/Search & Seizure proceedings. The Hon'ble High Court held that the practice of collecting post-dated cheques during the raid is not permissible means of collection of revenue. A similar view was earlier taken by the Hon'ble Gujarat High Court in the VAT Regime as well in the case of Atul Motors v State of Gujarat (R/Special Civil Application no 959/2015) and Automark Industries (i) Ltd v State of Gujrat (2014) SCC online Gujarat 14217.

### **Documents asked during Search & Seizure**

In General taxable person is asked to provide the Books of Accounts and records required to be maintained by the taxable person, including Trial balance, duly Audited Annual Financial Statements, Tax Audit reports, Cost Audit reports etc .

### **Precautions during Search & Seizure**

Taxable Person should be calm and obedient and shall not hide any documents and records and provide correct information to the Proper Officer. Taxable Person should not interfere or stop any officer conducting the Search. The Search Officer cannot search any other property not mentioned in the Search Warrant. A taxable person can ask the Search Officer to show his identity card, and before the start of the Search proceedings, the team of Officers conducting the Search and the accompanying witnesses should offer themselves for their personal search to the person in charge of the premises being searched. Similarly, after the completion of the Search all the officers and the witnesses should again offer themselves for their personal search. The taxable person should cross verify

the list prepared of all goods, documents recovered and seized/detained

### **Summon**

Even after the Search, Proper Officer has full right to summon and question any person and ask for Information and documents he may deem fit. Where any summons has been issued by the Proper Officer, the person to whom such summon is issued is required to present himself before the officer and provide required evidence or documents when required.

### **Conclusion**

Search and Seizure adversely affect the Taxable person's reputation and paralyze his business activities. Therefore while exercising such powers, the authorities should be rather careful and cautious and must exercise it strictly under the authority of the law. Inspection, Search or Seizure can only be carried out by a proper officer as envisaged by the legislature, only when such proper officer has 'reason to believe' regarding the existence of such exceptional circumstances.

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