

# Rising cases of Disputes in **GST**

## - Possibilities and Ways forward

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### **Disclaimer –**

- *Discussion made is based on my understanding of the law and not binding on any one*

# Introduction

- Notifications, Amendments, Orders and Circulars
- Focus is shifting – C to D, TIP
- What is rising in GST regime? SCN, Audit, Scrutiny, Search, Inspection....Worst is yet to come!
- Integrated approach of Tax Authorities – *Third Party Infm.*
- Use of AI, DA and DM – System check is becoming efficient gradually
- Reason of dispute – Machine or Law/Tax authorities or Tax payer
  - Machine – Wrong filing, delayed filing, Non-filing, ITC, Interest liability,
  - Law & Authorities - Not keeping a track of Amendment of Acts and Rules, Notifications, Circulars, Orders issued...
  - Taxpayer – Ignorance, wrong interpretation of provision of law, Expert/Legal/Professional Opinion, delay in refund
  - Evasion is not a dispute. It's a crime
- Source from which it can arise – System, Adjudicating Officer, DGGSTI, DRI, Audit

## Difficulties

- Notifications, Circulars & Orders till 21.10.2022

| Year         | CT         | CT-R       | IT        | IT-R       | UT        | UT-R       | Cess     | Cess-R    | Total      | Circulars  | Order     | Total       |
|--------------|------------|------------|-----------|------------|-----------|------------|----------|-----------|------------|------------|-----------|-------------|
| 2017         | 79         | 54         | 13        | 59         | 17        | 54         | 1        | 9         | 286        | 30         | 13        | 329         |
| 2018         | 80         | 32         | 4         | 33         | 15        | 32         | 1        | 2         | 199        | 61         | 8         | 268         |
| 2019         | 81         | 31         | 5         | 30         | 3         | 31         | 1        | 3         | 185        | 53         | 15        | 253         |
| 2020         | 104        | 5          | 6         | 5          | 2         | 5          |          |           | 127        | 14         | 2         | 143         |
| 2021         | 40         | 23         | 3         | 23         | 2         | 23         |          | 2         | 116        | 25         |           | 141         |
| 2022         | 22         | 11         |           | 11         | 4         | 11         | 1        |           | 60         | 12         | 1         | 73          |
| <b>Total</b> | <b>406</b> | <b>156</b> | <b>31</b> | <b>161</b> | <b>43</b> | <b>156</b> | <b>4</b> | <b>16</b> | <b>973</b> | <b>195</b> | <b>39</b> | <b>1207</b> |





## Inspection, Search & Seizure

- Inspection and Search.....are they same?
- Proper Officer who can conduct Search and Seizure
- Sec 67 (1)(a) and 67 (1)(b) – Power of inspection
- How to interpret the term '*reason to believe*' and '*secreted*'
- Sec 67 (2) – Power to Search and Seizure
- Can cash be seized?
- Can Statement of family members be forced upon?
- Instruction No. 01/202-21 (GST Investigation), dated 2.2.2021 – Guideline containing procedures to be followed during Search and Seizure

# Inspection, Search & Seizure

## CHAPTER XIV INSPECTION, SEARCH, SEIZURE AND ARREST

**67. Power of inspection, search and seizure.**— (1) Where the proper officer, **not below the rank of Joint Commissioner**, has *reasons to believe* that—

- (a) a taxable person has **suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement** under this Act or has **indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax** under this Act; or
- (b) any person engaged in the **business of transporting goods or an owner or operator of a warehouse or a godown or any other place** is **keeping goods which have escaped payment of tax** or has **kept his accounts or goods in such a manner as is likely to cause evasion of tax payable** under this Act,
- he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under subsection (1) or otherwise, has reasons to believe that **any goods liable to confiscation** or **any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place**, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is **not practicable to seize any such goods**, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he **shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer**:

Provided further that the documents or books or **things** so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

# Inspection, Search & Seizure

## CHAPTER XIV INSPECTION, SEARCH, SEIZURE AND ARREST

### 67. Power of inspection, search and seizure

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have **not been relied upon** for the issue of notice under this Act or the rules made thereunder, **shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.**

(4) The officer authorised under sub-section (2) shall have the **power** to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be **entitled to make copies** thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be **released, on a provisional basis**, upon execution of a bond and furnishing of a 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.



# Inspection, Search & Seizure

## CHAPTER XIV INSPECTION, SEARCH, SEIZURE AND ARREST

### 67. Power of inspection, search and seizure

(7) Where any goods are seized under sub-section (2) and **no notice** in respect thereof is given **within six months** of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on **sufficient cause** being shown, be extended by the proper officer for a **further period not exceeding six months**.

(8) The Government may, having regard to the **perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space** for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

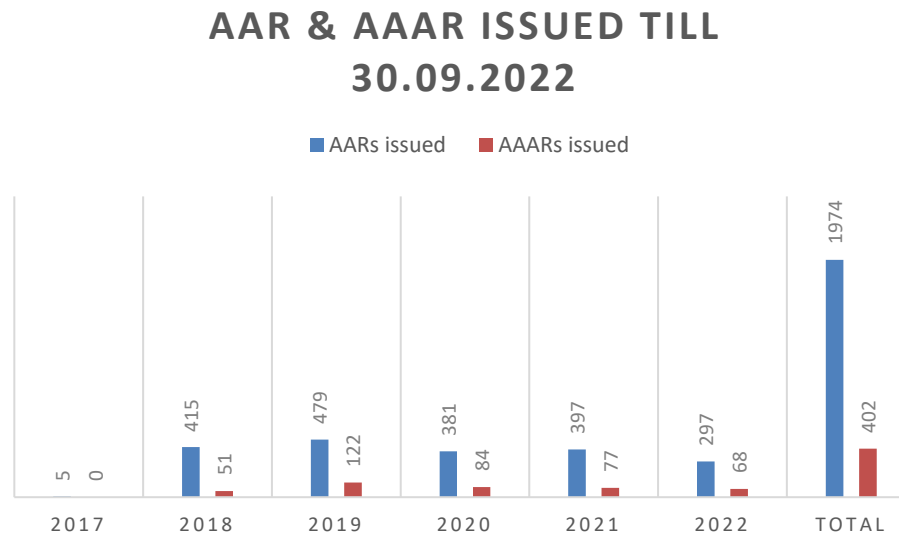
Notification No. 27/2018-CT, dated 13.06.2018 – 17 categories of goods notified

## Ways forward.....

- Keeping the books/records/documents/data ready for each year with Reco
- Continuous reading of Case laws (*developing a database of landmark judgements*), AARs , AAARs, Articles,
- Learning the skill of drafting, replying and Appeal
- Keeping abreast of the changes – On-line resources is of help
- SCN – Is Sec. invoked by the Authority proper? Is it under his jurisdiction?
- Timely reply and compliance to SCN with detailed computation of liability
- Avoidance of litigation – Admit if there is non-compliance and no ground

## Option

- AAR (1,974) and AAAR (402, 20%)



## Opportunity for CMAs

- Health check-up/Due Diligence.....worth doing by every tax payer (*Big taxpayers may make a big mistake*)
- Preparedness of audit u/s 65 and 66
- Cancellation of Regn., Reply to SCN, Search and Seizure, Investigation, Inspection, Scrutiny, Authorised person in case of PH,
- Lawyers/Law Firms – matters before the HC or SC
- OTS may be a possibility in near future – Preparedness required
- GSTAT – Section 116. Appearance by authorised representative, CMA having a valid CoP