

## **Inspection, Search & Seizure including Jurisdictional aspect**

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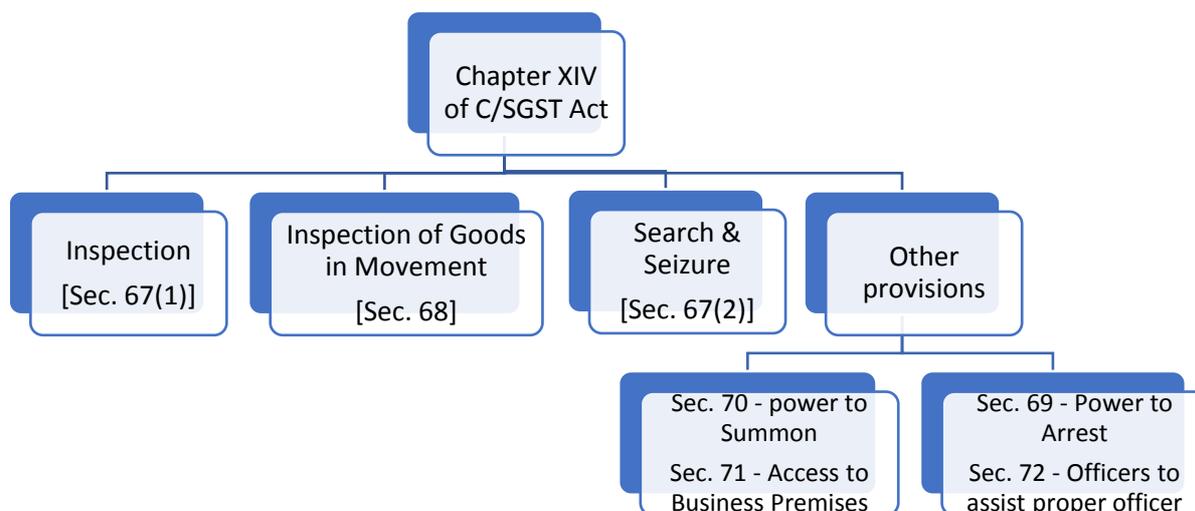
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This article attempts to compile provisions of Inspection, Search and Seizure (other than arrest and inspection of goods in movement) and enumerated relevant decisions of old law.

### **A. Introduction**

Power of Search and Seizure are very strong investigation tool in the hands of revenue authorities, which gives enormous opportunity to gather evidences and unearth suppressed things and information so as to properly identify evasion of payment of tax and/ or contravention of any provisions of the law. However, such an action is having an effect of interfering into one's independence in addition to having a chances of hampering business activities to some extent, hence normally these powers are exercised as a last resort of gathering information. To ensure safeguarding interest of regular, law abiding and honest tax payers, reasonable provisions have been incorporated in law.

The provisions of Section. 67 to 72 of the Central/ State Goods and Services Tax Act 2017, and Rule 139 to Rule 141 of C/SGST Act deals with powers and procedure of Inspection, Search & Seizure, summary of which can be presented as under:



Provisions of GST law are similar but not exactly same as that of pre-GST laws. Section 67 provides for Inspection as well as Search & Seizure of goods. Inspection is much softer version of Search & Seizure and are similar to Survey as enumerated under section 133A of the Income Tax Act 1961.

## B. Initiation of Inspection Proceedings

Section 67(1) reads as “*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.”*

Some of key aspects of above provisions are as under;

- Authorisation of Inspection has to be given by the officer of the rank of Joint Commissioner and above.
- Authorising officer must have **Reason to Believe** about
  - Taxable person –
    - Suppressing of any transaction; or
    - Suppressing Stock in hand; or
    - Claiming of excess Input Tax Credit; or

- Indulging in contravention of any of the provisions of the law to evade tax; or
    - transporter is keeping the goods which has escaped tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax
    - operator of warehouse or godown or any other place is keeping the goods which has escaped tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax
- Authorisation should be in writing in Form No. GST INS-01, for Inspection.
- Inspection can be of Place of Business only.

Place of Business has been defined in Section 2(85) to include godown or any other place where a taxable person stores his goods, maintain his books of accounts and place of agent. Accordingly, if books of accounts are being maintained or kept at residence of director or any other key managerial person the same may be treated as place of business and inspection can be carried out there.

### C. Initiation of Search & Seizure Proceedings

Section 67(2) says “*where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (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”*”

Some of key aspects of above provisions are as under:

- Authorisation of Search & Seizure has to be given by the officer of the rank of Joint Commissioner and above.
- Authorising officer must have **Reason to Believe** about
  - Goods liable for confiscation are secreted in any place
  - Books, documents or something, which is useful or relevant for proceeding under GST law, are secreted in any place
- Authorisation should be in writing in form GST INS-01 for Search.
- In case of Seizure, Order of Seizure is to be issued in form GST INS-02.

In search & seizure proceedings goods which are liable for confiscation can only be seized. As per Section 130(1) of the C/SGST Act, following goods are liable for confiscation, under the law:

- (i) If supply is made in contravention of any of the provisions of GST law with intention to evade payment of tax, or
- (ii) If goods are not accounted for on which tax is liable to be paid or
- (iii) If goods liable to tax are supplied without having applied for registration (*30 days time limit is there for applying registration, from the date person becomes liable for paying tax*).

#### D. Difference between Inspection & Search

| Aspect                                | Inspection – Sec. 67(1)  | Search – Sec. 67(2)   |
|---------------------------------------|--|---|
| Primary Purpose                       | Verification of transactions of supplies, Stock in hand, claim of ITC & contravention of provisions of the Act to evade tax. | Unearthing of goods liable for confiscation or Secreted Books, documents or things.   |
| Scope                                 | Inspection can be done at <b>Place of Business</b> only  | Search can be done at <b>Any Place</b> including residence of tax payer and/ or employees.  |
| Powers                                | Forceful action (Sealing or Break Open) cannot be adopted.   | Seal or Break Open the door of any premises or 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, can be resorted. |
| Seizure of Goods                      | Goods cannot be seized in inspection proceedings.  | Goods can be seized if they are liable for confiscation. If not practically possible to seize, constructive seizure can be there.   |
| Seizure of Books/ Accounts/ Documents | Books/ documents cannot be seized in inspection proceeding.  | Any secreted document, books or things, which may be useful or relevant to any proceedings can be seized.   |

#### E. Reason to believe

It is very well evident from the provisions of Section 67 that Proper Officer (JC or above) must have Reason to believe before authorising any action of Search & Seizure and Inspection as well. Term 'Reason to believe' is not defined under the GST law, however defined in Indian Penal Code 1860. Further the scope of the said term is more or less settled under Income Tax Law. As per section 26 of IPC "*A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise*". That means there are very less room for any doubt or ambiguity. Reason to believe refers to a positive, strong and firm opinion based on information and evidences. It definitely a subjective matter which may vary from case to case, however 'Reason to believe is not same as that of Reason to Suspect' (Indian Oil Corporation – 159 ITR 956 SC).

Hon'ble supreme court in the case of 'Lakhmani Mewal Das (103 ITR 437)' has held that the reason for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief. The rational connection postulates that there must be direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts.

The Hon'ble court further held that it is no doubt true that the court cannot go into sufficiency or adequacy of the material substitute its own opinion for that of the Income tax officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

## **F. Power to Summon & Recording of Statements**

As per Section 70 of the C/SGST Act proper officer(s) under the law have the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry. The summon can be given for giving evidence by way of statement on oath or production of any books or accounts, documents or other things. However, summon can be issued only during pendency of any enquiry under the law. While exercising powers to issue summons provisions of the Code of Civil Procedure, 1908 shall apply and such enquiries shall be deemed as 'Judicial Proceedings' under section 193 and Section 228 of IPC. That means if anyone intentionally gives false evidence in response to summon issued under section 70, or fabricates false evidence for the purpose of being used in any stage of such enquiry, may be punished with imprisonment which may extend to seven years, and shall also be liable to fine.

At the time of recording of statement, it is quite possible that a person doesn't have exact knowledge of facts and/or figures or might have forgot the same. In such a case the documents can be referred to refresh memory and statements can be given accordingly. As per section 59 of the Indian Evidence Act 1872, *"a witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct."*

As regards to presence of advocate at the time of taking statement by tax authorities, it has been held that it is not a right of the tax payer to have its counsel along with him. However, looking to the medical or other conditions the counsel may be allowed to attend the proceedings, however no consultation is allowed at the time of recording the statements. Hon'ble apex court in the case of 'Poolpandi Vs. Sup. Central Excise (60 ELT 24)' while holding the same ratio observed as that *"The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non – cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made"*

*and the benefits thereunder should not be expanded to favour exploiters engaged in tax evasion at the cost of public exchequer.”*

Issue of summon in any inquiry, to witness or give evidence should be reasonable and not arbitrary. The authority issuing the summon must issue summons to a witness only when the authority considers it necessary for summoning. This necessarily implies application of mind and is guided by the principles of reasonableness in the matter of summoning of witness. Guiding force for issuing summon should be ‘necessity of witness for the purposes of inquiry’.

Hon’ble Jharkhand High Court in the case of ‘Sudhir Deora Vs. CCE (284 ELT 326)’ had observed that it is quite possible that the senior most officers like managing director or General Manager, who are at the helm of the affairs of the company might not be having knowledge of minute operational things. The hon’ble court held that Enquiry Officer should keep in mind that he being an Officer authorized by law to summon anybody does not make him an Officer having no control of reasonableness and though he has right to summon any person either the Managing Director or the General Manager of the company or even a clerk of the company but he should not summon unless it is required for the purpose of an inquiry.

### **G. Release of Goods Seized**

*Section 67(6)/(7), Rule 140*

Goods seized at the time of search can be released on payment of applicable tax, interest and penalty. Alternatively the goods seized can be released provisionally on furnishing of:

- Bond in form No. GST INS-04 for value of the goods, declaring that goods shall be produced as and when required by the proper officer and any tax, interest, penalty, fine or other law full charges shall be paid within ten days of their demand in writing AND
- Security in the form of bank guarantee equivalent to the amount of tax, interest and penalty payable in respect of such goods.

If goods are seized in any search and no notice in respect thereof is given within six months of the seizure of the goods, such goods shall be released to the person from whose possession they were seized.

### **H. Seizure of Perishable/ hazardous Goods:**

*Section 67(8), Rule 141, Notification No. 27/2018(CT) Dt. 13.06.2018*

If the goods seized under any search proceedings are Perishable or Hazardous in nature (as notified) the same shall be disposed of by the proper officer as soon as possible after its seizure. If the taxable person pays lower of ‘market price of such goods’ or ‘demand (including interest and penalty), which is payable or may become payable, by the tax payer’ such goods shall be released to him after passing the order in Form GST INS-05. If the tax payer doesn’t pay the amount as stated above the Commissioner will dispose of such goods and realisation proceeds shall be adjusted against tax, interest, penalty or any other amount payable in respect of such things.

Major goods notified for purposes of Section 67(8) i.e. to be treated as perishable or hazardous includes newspaper, batteries, petroleum products, fireworks, chemicals, drugs,

unclaimed technology driven goods, all goods covered under chapter 1 to 24 of the Customs Tariff Act 1975 i.e. all animals and vegetables and products made from them.

### **I. Release of Books/ Documents Seized**

Books of accounts, documents or other things seized under section 67(2) are to be kept with proper officer till the time they are required for verification or examination for enquiry or proceedings under the GST law. However, after issue of notice if some documents, books or things seized are not relied upon in for issue of notice the same shall be returned within 30 days from the date of issue of notice. However, person from whom documents are seized shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officers 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.

### **J. Jurisdiction for Inspection, Search & Seizure**

GST is unique tax law from the aspect that its first time when State and Central governments are Levying & Collecting tax on same taxable event simultaneously. It poses challenges before the government for administration of assesses's as well. To address this challenge, Section 6 was inserted in both the enactments i.e. State and Central to provide for cross empowerment, so that Central Tax Officer can have jurisdiction under State Tax and vice a versa too. However, due to enabling cross jurisdiction by section 6, every tax payer gets covered by two jurisdictional authorities. Whereas, as enumerated by government many times, the idea was to have single jurisdiction (or interface) for all administrative purposes. In the 9<sup>th</sup> GST Council meeting held on 16<sup>th</sup> January 2017, to ensure its objective of single interface under GST State and Central government decided to share tax payer base, for all administrative controls, between them in the ration of 90 : 10 for small tax payers and 50 : 50 for other tax payers. Apart from the same it was decided that both the Central and the State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain. However, in the afterward meetings of GST Implementation Committee (GIC), on 25<sup>th</sup> August and 31<sup>st</sup> August 2017, the matter in relation to principles for division of taxpayers between the centre and the states i.e. cross empowerment were discussed and laid before GST Council again in its 21<sup>st</sup> meeting held on 9<sup>th</sup> September 2017, whereby the same was approved. For implementation of its decisions of cross empowerment GST council issued a circular no. 1/2017 dated 20.09.2017 mentioning its decision and principles for cross empowerment under GST for all administrative purposes. On the basis of this circular State GST Commissioners and Chief Commissioner of Central Taxes issued joint orders for cross empowerment, whereby it was specifically written that to ensure single interface tax payers are divided between state and centre for all administrative controls/ purposes. It is evident from documents of above meetings and circular that, intelligence based enforcement action was only discussed in 9<sup>th</sup> GST Council meeting and after that neither covered in 21<sup>st</sup> GST Council meeting nor the same was covered in authoritative documents released for cross empowerment of the assessee's i.e. Circular No. 1/2017 of GST Council and Cross Empowerment Order(s) of respective states. From above analysis, prima facie it appears that as on date Central Tax authority can exercise jurisdiction for all purposes (including search and seizure) under both the enactments i.e. State Tax and Central Tax for assessee's assigned to it only. And on the same line for assessee's assigned to State, all

