

EFFECTIVE HANDLING OF SEARCH AND SEIZURE UNDER GST



Date : 23rd November 2024

Session : The Institute of Chartered Accountants of India , Raipur Branch of CIRC

CONTENT / COVERAGE OF SESSION

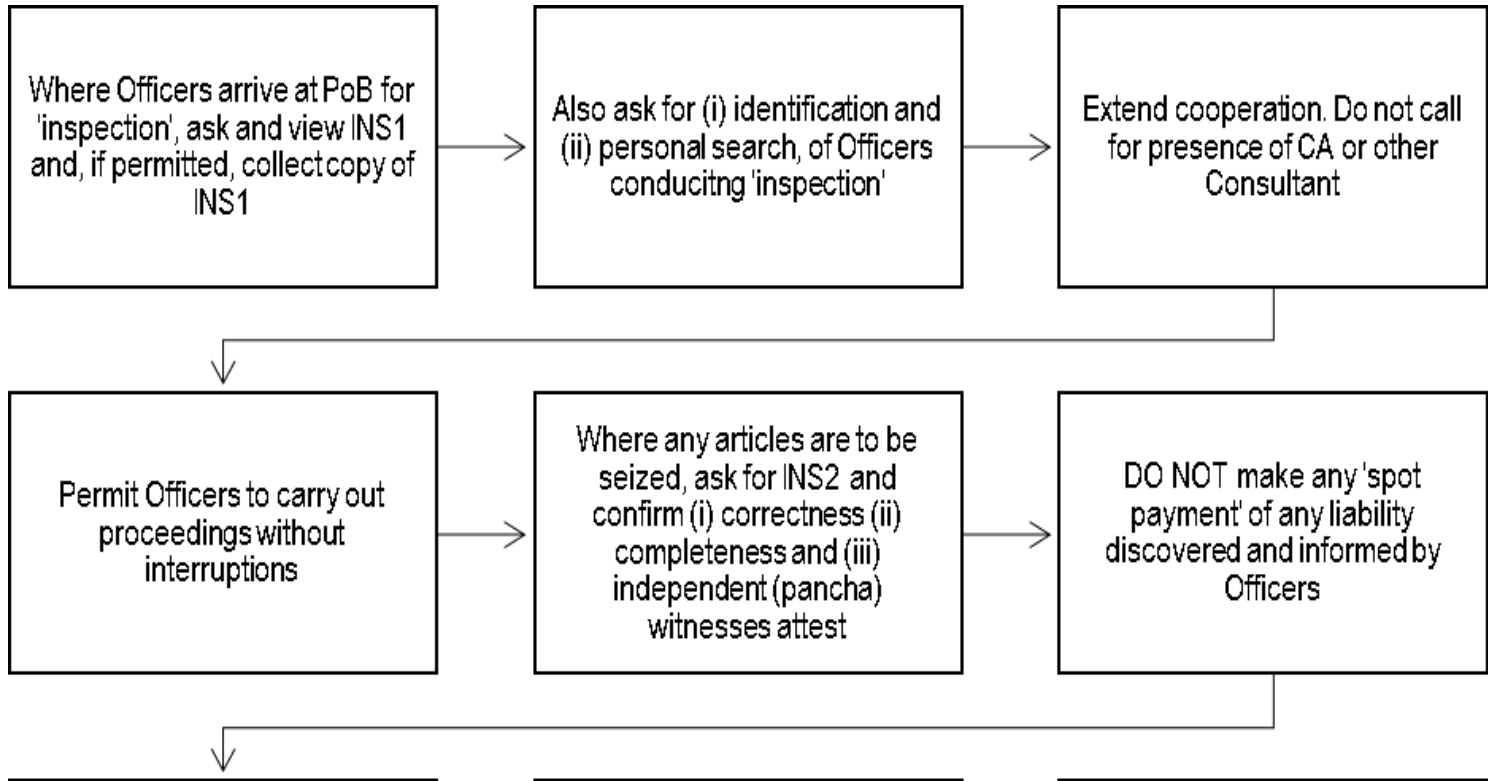
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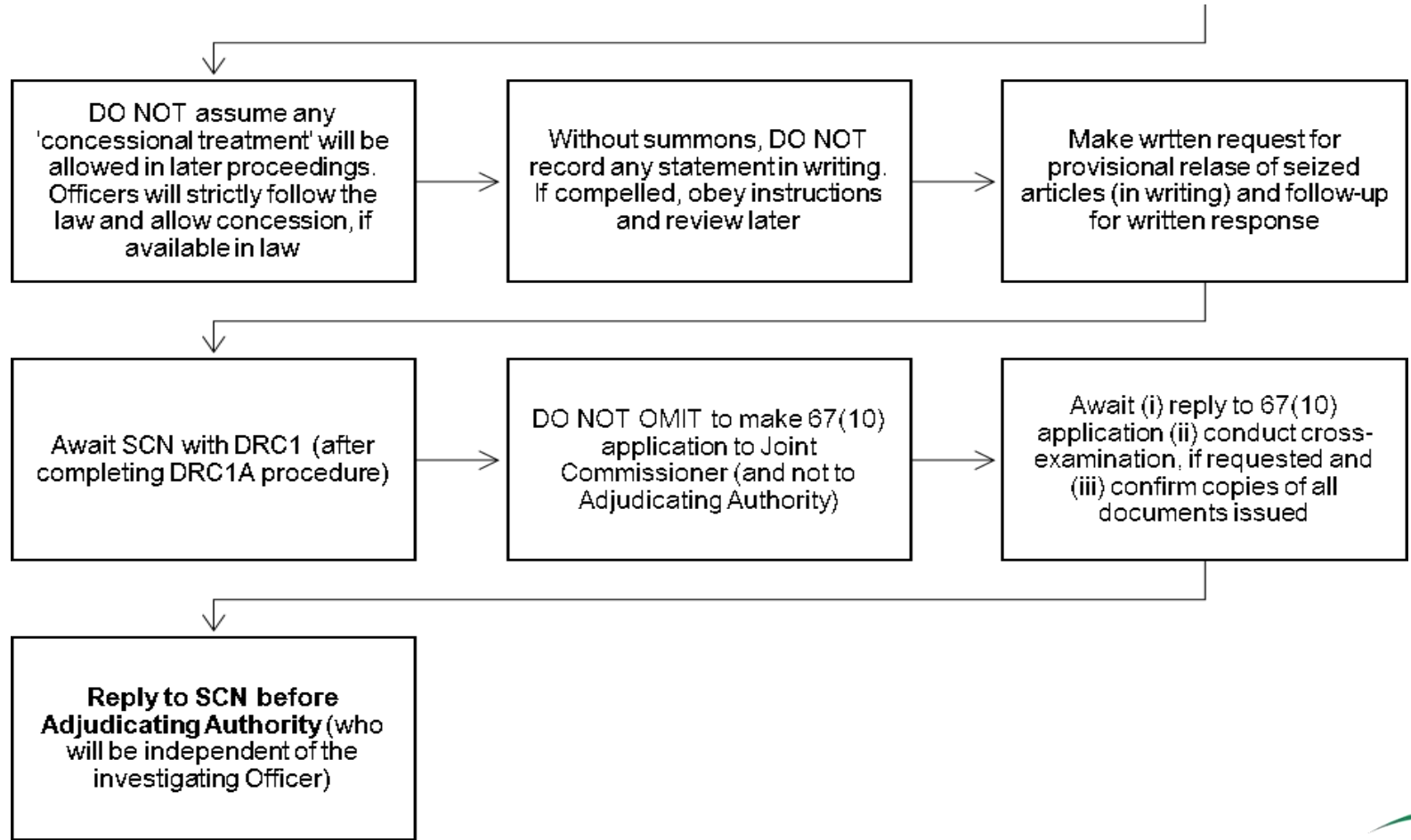
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OVERVIEW OF THE STEPS INVOLVED



INVALID PROCEEDING -QUESTIONING - IMPORTANCE

Assessment proceedings, etc., not to be invalid on certain grounds.

160. (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act **shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein,** if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings **are in substance and effect in conformity with or according to the intents,** purposes and requirements of this Act or any existing law.

(2) The service of any notice, order or communication **shall not be called in question,** if the notice, order or communication, as the case may be, has **already been acted upon by the person to whom it is issued or where such service has not been called in question** at or in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication.



BACKGROUND WORKING – INSPECTION , SEARCH AND SEIZURE

Initial Step / Triggering Step

Any officer may gather intelligence from sources within the law or from proceedings under the law such as scrutiny or audit or from third-party sources such as persons liable to maintain and disclose transaction-level data such as CBDT, Sub-registrar, RERA, etc. which justifies inspection of the premise of (i) taxable person or (ii) other person(s).



BACKGROUND WORKING – INSPECTION, SEARCH AND SEIZURE

67 (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



BACKGROUND WORKING – INSPECTION , SEARCH AND SEIZURE

67 (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(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,



BACKGROUND WORKING – INSPECTION , SEARCH AND SEIZURE

67 (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—



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.

REASONS TO BELIEVE v/s REASON TO SUSPECT

Step Approval: The officer would then file a note to the Joint Commissioner (or higher rank Officer) for the grant of authorization in Form GST INS-01 along with details of intelligence gathered.

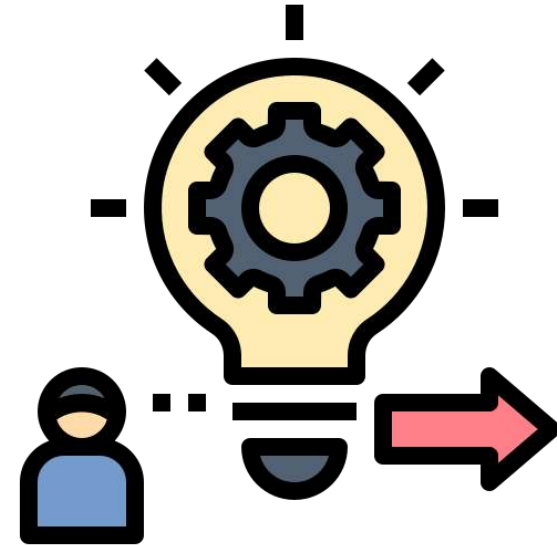
Form GST INS-01 must be specific as to the following whether:

- **Only inspection** to be carried out
- **Both inspection and search** to be carried out – suspicion about (i) goods liable to confiscation or (ii) documents, books, or things, found to be ‘secreted’ at specified location and duly noted on file. Part C of Form GST INS-01 is referred.

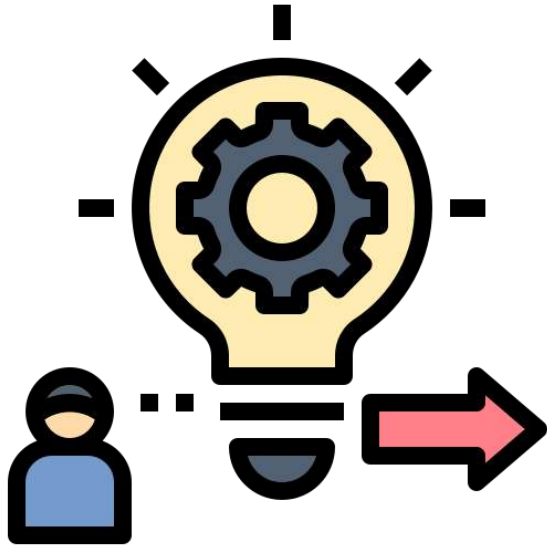


REASONS TO BELIEVE v/s REASON TO SUSPECT

- ❑ 'Reasons to believe' is less than 'evidence in possession' but more than 'suspicion' about potential tax evasion.
- ❑ While 'reasons to believe' are not disclosed at the outset, they are necessarily open for taxpayer to call them into **question in later proceedings to challenge the validity** of the exercise of these exceptional powers in section 67.
- ❑ 'Reasons to believe' sufficient to invoke exceptional powers under section 67 to gather additional evidence about the evasion of tax.



REASONS TO BELIEVE v/s REASON TO SUSPECT



- ❑ Care must be taken that (i) existence (ii) validity (iii) sufficiency and (iv) documentation of relevant material on files, in support of these reasons to believe
- ❑ While a court will not substitute its own wisdom for that of the Proper Officer (in granting authorization), **absence of reasons or existence of frivolous and implausible reasons**, will certainly rob proceedings of lawful jurisdiction.

Commissioner of CGST v. R.J. Trading Co [2024] 160 taxmann.com 532 (SC)

High Court observed that there was non-application of mind by officer issuing search authorization which was issued on basis of a **communication received from another field formation requesting verification with regard to existence of assessee only**. There was nothing on record to indicate existence of reasonable belief with officer issuing search authorization that **'any' goods was liable for confiscation or 'any' document, or book or thing relevant for proceedings under CGST Act were secreted in assessee's premises** - Search authorization was accordingly held illegal.

REASONS TO BELIEVE v/s REASON TO SUSPECT



- ❑ Tainted discovery cannot be acted upon, and GST allows a getaway by taxpayers' consent in section 160(2), but illegality by way of 'lack of jurisdiction' is so profound that not even section 160(2) can come to the rescue of the demand consequent to such tainted discovery.

But the Apex Court has held in the case of ***Pooran Mal Etc. v. DIIT, AIR 1974 SC 348*** that evidence collected in illegally conducted search can still be relied upon and used in demand and prosecution proceedings; it is, therefore, imperative that taxpayer attends to only valid proceedings and objects lawfully where proceedings are illegal.

FORM – AUTHORISATION - DELEGATION



Rule 139. (1) Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that **a place of business or any other place is to be visited** for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in **FORM GST INS-01** authorising **any other officer subordinate** to him to conduct the **inspection or search** or, as the case may be, seizure of goods, documents, books or things liable to confiscation

FORM – AUTHORISATION - DELEGATION

[FORM GST INS-1

AUTHORISATION FOR INSPECTION OR SEARCH

[See rule 139 (1)]

To

.....
.....

(Name and Designation of officer)

Whereas information has been presented before me and I have reasons to believe that—

A. M/s. _____

- has suppressed transactions relating to supply of goods and/or services
- has suppressed transactions relating to the stock of goods in hand,
- has claimed input tax credit in excess of his entitlement under the Act
- has claimed refund in excess of his entitlement under the Act
- has indulged in contravention of the provisions of this Act or rules made thereunder to evade tax under this Act;

OR

B. M/s. _____

- is engaged in the business of transporting goods that have escaped payment of tax
- is an owner or operator of a warehouse or a godown or a place where goods that have escaped payment of tax have been stored
- has kept accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act.

OR

OR

C.

- goods liable to confiscation / documents relevant to the proceedings under the Act are secreted in the business/residential premises detailed herein below
<<Details of the Premises>

Therefore,—

- in exercise of the powers conferred upon me under sub-section (1) of section 67 of the Act, I authorize and require you to inspect the premises belonging to the above mentioned person with such assistance as may be necessary for inspection of goods or documents and/or any other things relevant to the proceedings under the said Act and rules made thereunder.

OR

- in exercise of the powers conferred upon me under sub-section (2) of section 67 of the Act, I authorize and require you to search the above premises with such assistance as may be

1. Inserted by the Central Goods and Services Tax (Third Amdt.) Rules, 2017, w.e.f. 1-7-2017.

Check the INS has DIN for each search authorization.



FORM – AUTHORISATION - DELEGATION

necessary, and if any goods or documents and/or other things relevant to the proceedings under the Act are found, to seize and produce the same forthwith before me for further action under the Act and rules made thereunder.

Any attempt on the part of the person to mislead, tamper with the evidence, refusal to answer the questions relevant to inspection / search operations, making of false statement or providing false evidence is punishable with imprisonment and /or fine under the Act read with ²[sections 214, 216, 227 and sub-section (3) of section 318 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023)].

Given under my hand & seal this day of (month) 20.... (year). Valid for day(s).

Seal

Place

Signature, Name and designation of the
issuing authority

Name, Designation & Signature of the Inspection Officer/s

- (i)
- (ii)



PREPARATIONS PRIOR TO INSPECTION

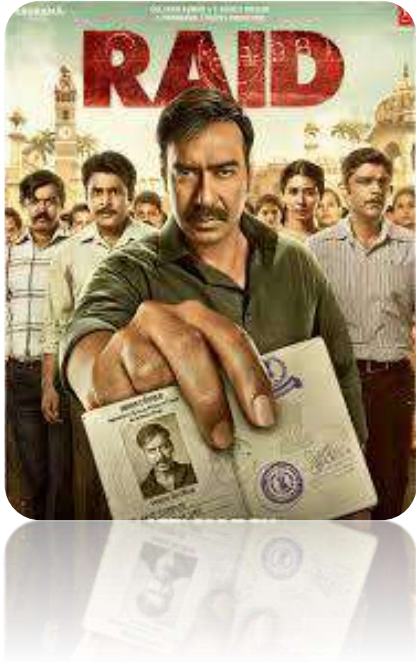
Issue of Warrant : Based on Form GST INS-01, the Authorized Officer (not below the rank of **Assistant Commissioner of State or Senior Intelligence Officer of Centre**) is then authorized to conduct inspection or inspection-cum-search of the identified location along with witnesses (panchas). Lady Officer to be present in case premise is a residence or such other place likely to be occupied by ladies and children.



PREPARATIONS PRIOR TO INSPECTION

CBIC Instruction 1/2020-21

(F.No .GST/INV/DGOV Reference/20-21) dated 2 Feb 2021



Some important aspects are:

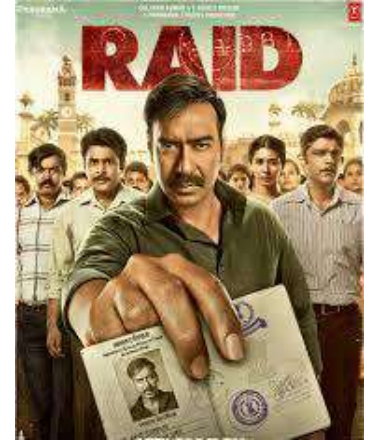
- First identify themselves by showing their identity cards, Personal search of officers be permitted before inspection;
- Acknowledgment of party on Form GST INS-01 be collected and retained on file;
- Presence of lady Officer if women and children present on location;
- Witnesses (panchas) must be independent persons;

PREPARATIONS PRIOR TO INSPECTION

CBIC Instruction 1/2020-21

(F.No .GST/INV/DGOV Reference/20-21) dated 2 Feb 2021

- Spot recovery not permissible – DRC-03 Payment
- Videography to be considered in case of sensitive premises.
- A Panchnama containing truthful account of the proceedings of the search shall necessarily be made and a list of documents/goods/things recovered.
- Officers must be sensitive towards the assessee/party. Social and religious sentiments of the person.
- Children should be allowed to go to school, after examining of their bags.if a person in the premises is not well, a medical practitioner may be called.



AUTHORISATION - EXHAUSTED BY EXERCISE

- **Specific officer** (no sub-delegation allowed)
- At **specified places** (precise and exhaustive, not vague and inclusive)
- Within **specified time** to carry out (day and date stated on it)
- Authorization may expire even **after lapse of time**



- routine extension of inspection to conduct search-cum- seizure will be illegal for want of jurisdiction and hence, unauthorized.
- The officers should leave the premises immediately after completion of Panchnama proceedings. **(Instructions)**

INSPECTION VERSUS SEARCH

- ❑ **Authorization is not a *carte blanche* permission** i.e., not a full authority to inspect or search any place or premises because (i) inspection and (ii) search, are **two different processes** in this law.



67(2) 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:

INSPECTION VERSUS SEARCH

What is the meaning of Secreted ?

Can a Cell phone or laptop be seized ?

- ❑ Articles liable to seizure are only those that 'are secreted' and if they are 'not secreted' then the Authorized Officer will be unable to seize them within the scope of this provision.
- ❑ 'Secreted' does not merely refer to the fact that certain articles were lying around but refers to those that were lying around coupled with the use of some 'device' that makes their detection impossible.
- ❑ 'Secreted' includes articles openly kept but in an undisclosed location in a manner that make them go undetected.



INSPECTION VERSUS SEARCH

- ❑ Whether 'reasons to believe' that provide reasons to grant authorization for 'inspection' are sufficient to conduct 'search-cum-seizure' or 'new or additional' reasons are required.



	INSPECTION	SEARCH-CUM-SEIZURE
A.	Evasion of tax' is the touchstone for 'inspection'	Articles being 'secreted' is the bedrock of 'search-cum-seizure'
B.	Form GST INS-01 in Part-A or Part-B will only be issued to conduct inspection	Report back - of outcome of such inspection proceedings; Any discovery during inspection will then be relied upon to support reasons to issue another Form GST INS-01 in Part-C to proceed with search-cum-seizure proceedings
C.	If both these dissimilar reasons are known prior to inspection, then comprehensive Form GST INS- 01 may be issued in Part-A or Part-B to conduct inspection as well as in Part- C to conduct search cum seizure	

INSPECTION VERSUS SEARCH



[Excellentvision Technical Academy \(P.\) Ltd. v. State of U.P. \[2024\] 163 taxmann.com 555 \(Allahabad\)](#)

It appeared that no reasons to believe had been noted in INS-1 - In fact, this document was provided to petitioner upon petitioner making an application - This document appeared to be fabricated and created as an afterthought - Entire proceedings that had originated from illegal search and seizure carried out under section 67 were to be quashed and set aside.

- ❑ **Form GST INS-01, inspection + search + seizure is in one Form** and the selection of each Part in this Form must be carefully examined as to whether the grant of authorization is for **one (inspection), two (search and seizure) or all three** aspects in a manner that it will stand up to judicial scrutiny later. (new or additional). *Reasons to believe cannot be an 'after discovery' (that is, discovery after search was conducted).*
- ❑ Any slip in this 3-step procedure will taint the entire proceedings and **legitimate discovery could be annulled** due to the process adopted being tainted and bad in law.

PARALLEL PROCEEDINGS / JURISDICTION

CBEC-20/10/07/2019-GST Dated: 22nd June, 2020
Reference form DGGI on Cross empowerment under GST. reg.

- ❑ Issue raised in the reference is whether intelligence based enforcement actions initiated by the Central Tax officers against those taxpayers which are assigned to the State Tax administration gets covered under section 6(1) of the CGST Act and the corresponding provisions of the SGST/UTGST Acts or whether a specific notification is required to be issued for cross empowerment on the same lines as notification No. 39/2017-CT dated 13-10-2017 authorizing the State Officers for the purpose or refunds under section 54 and 55 of the COST Act.



PARALLEL PROCEEDINGS / JURISDICTION

CBEC-20/10/07/2019-GST Dated: 22nd June, 2020

Reference form DGGI on Cross empowerment under GST. reg.



- ❑ 3.2 Thus in terms of sub-section (1) of section 6 of the CGST Act and sub-section (1) of section 6 of the respective **State GST Acts** **respective State Tax officers and the Central Tax officers** **respectively are authorised to be the proper officers for the purposes of respective Acts and no separate notification** is required for exercising the said powers in this case by the Central Tax Officers under the provisions of the State GST Act. It is noteworthy in this context that the registered person in GST are registered under both the CGST Act and the respective SGST/UTGST Act.

PARALLEL PROCEEDINGS / JURISDICTION

Vivek Narsaria vs. State of Jharkhand [2024] 158 taxmann.com 523 (Jharkhand)[15-01-2024]

- ❑ DGGI could not raise a question about credibility and competence of State GST authorities, in carrying out investigation concerning wrong/inadmissible availment of input tax credit, inasmuch as, officers of DGGI does not enjoy any special power or privilege in comparison with officers of State GST authorities - Proceedings on basis of search and seizure by State authorities, being prior in point of time and all proceedings being inter-related, State authorities were to continue with proceedings - Therefore, Preventive Wing of CGST and DGGI Wing of CGST, would forward all their investigation carried out as against petitioner and inter-related transaction to State authorities, **who would continue with proceedings from same stage**



SEIZURE OF GOODS – PROCESS



Section 67(2) Continues...

Provided that where it is **not practicable to seize any such goods**, the proper officer, or any officer authorized 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.

SEIZURE OF GOODS

Rule 139(2) Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorised officer shall make an **order of seizure in FORM GST INS-02.**

FORM GST INS-02

ORDER OF SEIZURE

[See rule 139 (2)]

Whereas an inspection under sub-section (1)/search under sub-section (2) of Section 67 was conducted by me on ___/___/___ at ___:___ AM/PM in the following premise(s):

<<Details of premises>>

which is/are a place/places of business/premises belonging to:

<<Name of Person>>

<<GSTIN, if registered>>

in the presence of following witness(es):

1. <<Name and address>>
2. <<Name and address>>

and on scrutiny of the books of accounts, registers, documents / papers and goods found during the inspection/search, I have reasons to believe that certain goods liable to confiscation and/or documents and/or books and/or things useful for or relevant to proceedings under this Act are secreted in place(s) mentioned above.

Therefore, in exercise of the powers conferred upon me under sub-section (2) of section 67, I hereby seize the following goods/ books/ documents and things:

A) Details of Goods seized:

Sr. No	Description of goods	Quantity or units	Make/mark or model	Remarks
1	2	3	4	5

SEIZURE OF GOODS

Rule 139(4) Where it is not practicable to **seize any such goods**, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in **FORM GST INS-03** that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

FORM GST INS-03
ORDER OF PROHIBITION
[See rule 139(4)]

Whereas an inspection under sub-section (1)/search under sub-section (2) of Section 67 was conducted on ___/___/___ at ___:___ AM/PM in the following premise(s):

<<Details of premises>>

which is/are a place/places of business/premises belonging to:

<<Name of Person>>

<<GSTIN, if registered>>

in the presence of following witness(es):

1. <<Name and address>>
2. <<Name and address>>

and on scrutiny of the books of accounts, registers, documents / papers and goods found during the inspection/search, I have reasons to believe that certain goods liable to confiscation and/or documents and/or books and/or things useful for or relevant to proceedings under this Act are secreted in place(s) mentioned above.

Therefore, in exercise of the powers conferred upon me under sub-section (2) of section 67, I hereby order that you shall not/shall not cause to remove, part with, or otherwise deal with the goods except without the previous permission of the undersigned:

Sr. No	Description of goods	Quantity or units	Make/mark or model	Remarks
1	2	3	4	5

Place:

Name and Designation of the Officer

POWER TO SEAL OR BREAK OPEN THE DOOR

67(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**.

- Immovable property can be sealed, and the Authorized Officer can 'break' open the door to such premises where access to such premises is denied.
- Movable property such as almirah, box or receptacle may be broken open to gain access.
- Electronic equipment - Access is prohibited - technical experts may be involved with search party or taxpayer's staff.

What to do - if the investigating officer ask - Password of Phone/ Google Id .

WHAT CAN BE SEIZED ?

CASH AND SILVER BRICKS HIDDEN IN A WALL

GST Raid, Rs 10 crore currency notes, 19 kg silver bricks concealed in the wall unearthed

UNMESH GUJARATHI
www.sproutsnews.com



A story similar to a film plot has come to the fore from Mumbai's Zaveri Bazar. In a search operation akin to Bollywood actor Ajay Devgan's film "Raid", the GST department has come across the clandestine affair of black money worth crores of rupees being hidden in the wall in the office of a merchant dealing in gold and jewellery.

partment has also begun parallel investigation in this case. **GST DEPARTMENT COMES ACROSS THE BOOTY**

The GST dept. suspected something fishy when it noted that the turnover of Chamunda Bullion rose from Rs 22.83 crore in 2019-2020 to Rs 665 crore in 2020-2021 to Rs 1764 crore in 2022. As such the GST dept. began the investigation into the turnover of the last three years. In the search of the premises of Chamunda Bullion, the GST dept. came across the



The film style story of a gold

WHAT CAN BE SEIZED ? CASH ALSO ?

67(2) 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,

Smt. Kanishka Matta v. Union of India

[2020] 120 taxmann.com 174 (Madhya Pradesh)

GST : **Expression 'things'** occurring in section 67(2) would cover cash also; GST Authority are empowered to seize cash from assessee under section 67(2)

Deepak Khandelwal v. Comm. of CGST

[2023] 153 taxmann.com 443 (Delhi)[17-08-2023]

During search, proper officer **cannot seize currency and other valuable assets** in exercise of powers under sub-section (2) of section 67; even if so done, same are required to be returned by **virtue of sub-section (3) of section 67** when assets and currency had not been relied upon in notice issued subsequently.

WHAT CAN BE SEIZED ? CASH ALSO ?



State Tax Officer (IB) vs. Shabu George

[2023] 153 taxmann.com 138 (SC)[31-07-2023]

- GST : SLP dismissed against High Court's ruling that in an investigation aimed at detecting tax evasion under GST Act, cash cannot be seized, especially **when cash does not form part of stock-in-trade of business.**

Deepak Khandelwal v. Comm. of CGST

[2023] 153 taxmann.com 443 (Delhi)[17-08-2023]

- Seizure of documents or books or things is permissible so as to aid in proceedings that may be instituted under Act; otherwise documents or books or things cannot be confiscated and have to be returned –
- **Purpose of section *67 is not recovery of tax;** its purpose is to empower authorities to unearth tax evasion and ensure that taxable supplies are brought to tax.

RELEASE OF SEIZED GOODS / DOCUMENTS ?



Return of Documents

67(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.**

Copy of the Documents

67(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.**

RELEASE OF SEIZED GOODS / DOCUMENTS ?



- ❑ The person from whose custody **any documents are seized may be allowed to make copies thereof or take extracts therefrom for which he/she may be provided a suitable time and place to take such copies** or extract therefrom. However, if it is felt that providing such copies or extracts therefrom prejudicially affect the investigation, the officer may not provide such copies.
- ❑ *If such request for taking copies is made during the course of search, the same may be incorporated in Panchnama, intimating place and time to take such copies. ([INSTRUCTION –XI](#))*

RELEASE OF SEIZED GOODS / DOCUMENTS ?

SLN Infra v. Principal Commissioner of Central Tax [2024] 167 taxmann.com 363 (Karnataka)

Where assessee's original documents were seized in search under section 67(2) of CGST Act, pre-show cause notice intimation and show cause notice issued were based upon records, papers, documents etc. seized by respondents, records were thus not required, respondent- authority was to be directed to return back said documents

Savinder Sharma v. Director General, Directorate of Revenue Intelligence - [2024] 163 taxmann.com 343 (Delhi)

Where assessee/petitioner sought copies of documents seized during search by revenue authorities, alleging search was illegal as he had no concern with company against whom search authorization was issued, High Court directed revenue to decide petitioner's representation seeking copies as per law within 2 weeks.

WHAT IS PANCHNAMA ?



❑ A Panchnama containing truthful account of the proceedings of the search shall necessarily be made and a **list of documents/goods/things recovered** should be prepared, it should be ensured that **time and date of start of search and conclusion of search must be mentioned** in the Panchnama. The fact of offering personal search of the officers and witnesses before initiation and after conclusion of search must be recorded in the Panchnama.

❑ The officer authorized to search the premises **must, sign each page of the Panchnama and annexures**. A copy of the Panchnama along with all its annexures should be given to the person-in-charge of the premises being searched and acknowledgement in this regard may be taken.

WHAT IS PANCHNAMA ?

- ❑ If the person-in-charge refuses to sign the Panchnama, the same may be pasted in a conspicuous place of the premises, in presence of the witnesses.
- ❑ Photograph of the Panchnama pasted on the premises may be kept on record.



SEIZURE V/s CONFISCATION

☐ SEIZURE OF GOODS

• **Definition:** Seizure refers to taking possession of goods by the authorities when they believe the goods are liable for confiscation.

• **Nature:** Temporary in nature; goods are held until further investigation or legal proceedings are completed.

• **Ownership:** Ownership of the goods remains with the person/entity until a final decision is made.

• **Provision under GST:** Section 67(2) of the CGST Act allows seizure if the officer has reasons to believe goods are liable for confiscation.

☐ CONFISCATION

• **Definition:** Confiscation involves permanently depriving the owner of goods after due legal process, declaring the goods as liable for confiscation.

• **Nature:** Permanent in nature; goods become the property of the government.

• **Ownership:** Ownership is transferred to the government after confiscation.

• **Provision under GST:** Section 130 of the CGST Act deals with confiscation of goods for serious offenses like intent to evade taxes.



WHEN CONFISCATION ?

Section 130. Confiscation of goods or conveyances and levy of penalty.-

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder **with intent to evade payment of tax;** or

(ii) **does not account** for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act **without having applied for registration;** or



WHEN CONFISCATION ?



Description	Intent to evade	Tax liability
(i) Supplies in contravention (out/in)	Yes	Not paid
(ii) Omits accounting stock of goods	-	Liable but not paid
(iii) Supplies without registration	-	Liable but not paid
(iv) Any contravention	Yes	Not paid

(iv) contravenes any of the provisions of this Act or the rules made thereunder **with intent to evade payment of tax;** or

(v) uses **any conveyance as a means of transport** for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be **liable to penalty under section 122.**

DIFFERENCE OF STOCK LIABLE TO CONFISCATION ?

- ❑ Mere excess stock, in absence of 'intent to evade payment of tax' could not be ground to invoke section 130(1)(ii) of CGST Act to impose penalty
- ❑ Entire tax determined and penalty levied only on basis of survey by taking recourse under section 130 of CGST Act instead of recourse to section 74 ibid was not sustainable.



- Maa Mahamaya Alloys (P.) Ltd. vs. State of U.P.
[2023] 150 taxmann.com 158 (Allahabad)[23-03-2023]
- Shree Om Steels vs. Additional Commissioner, Grade-2 [2024] 165 taxmann.com 14 (Allahabad)[19-07-2024]
- Dinesh Kumar Pradeep Kumar vs. Additional Commissioner Grade 2
[2024] 165 taxmann.com 166 (Allahabad)[25-07-2024]

DIFFERENCE OF STOCK LIABLE TO CONFISCATION ?

Where articles are not secreted,

Section 35(6) prescribes as under:

*“(6)where the registered person fails to account for the goods or services or both in accordance with the provisions of sub- section (1), the Proper Officer shall determine the amount of tax payable on the goods or services or both **that are not accounted for**, as if such goods or services or both had been supplied by such person and the provisions of section 73 or 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.”*



RELEASE OF SEIZED GOODS

❑ PROVISIONAL BASIS

Sec 67(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.

❑ PERMANENTLY

(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.

RELEASE OF SEIZED GOODS

Bond and security for release of seized goods.

Rule 140. (1) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in **FORM GST INS-04** and **furnishing of a security in the form of a bank guarantee** equivalent to the amount of **applicable tax, interest and penalty** payable.

Explanation.—For the purposes of the rules under the provisions of this Chapter, the "applicable tax" shall include central tax and State tax or central tax and the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017).



REFUSAL OF PROVISIONAL RELEASE, NON-APPEALABLE

- ❑ Among other matters, **section 121(b)** makes it clear that the decision of (i) seizure and (ii) retention, are not appealable.
- ❑ Therefore, decision of Authorized Officer to seize books of account, register and other documents which were found to be secreted, **is not appealable**. Further, refusal to permit provisional release is also not appealable.
- ❑ However, care must be taken that the bar in section 121 does not preclude **(i) calling into question the validity of seizure itself in adjudication proceedings or (ii) in judicial review.**



DISPOSAL OF PERISHABLE OR HAZARDOUS GOODS

(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.



DISPOSAL OF PERISHABLE OR HAZARDOUS GOODS



**Seizure
notification
no.27/2018-
central tax,
dated 13-6-
2018**

(1)	Salt and hygroscopic substances
(2)	Raw (wet and salted) hides and skins
(3)	Newspapers and periodicals
(4)	Menthol, Camphor, Saffron
(5)	Re-fills for ball-point pens
(6)	Lighter fuel, including lighters with gas, not having arrangement for refilling
(7)	Cells, batteries and rechargeable batteries
(8)	Petroleum Products
(9)	Dangerous drugs and psychotropic substances
(10)	Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
(11)	Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
(12)	Fireworks
(13)	Red Sander
(14)	Sandalwood
(15)	All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
(16)	All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new

SEARCH WITHOUT APPROPRIATE APPROVAL

Case

An officer finds huge undeclared stock at a warehouse during an investigation under GST.

The search was conducted urgently without prior Commissioner approval due to the likelihood of evidence being destroyed.



What CrPC Say :

Section 165(5) of CrPC requires that when a search is conducted without a warrant, the officer must send a report to the nearest ~~Magistrate~~ Commissioner explaining the necessity and details of the search.

Section 67(10)

MANNER OF PREPARING - INVENTORY

Sec 67(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2),

he shall prepare an inventory of such goods in such manner as may be prescribed.



Rule 139(5) - containing, inter alia, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.

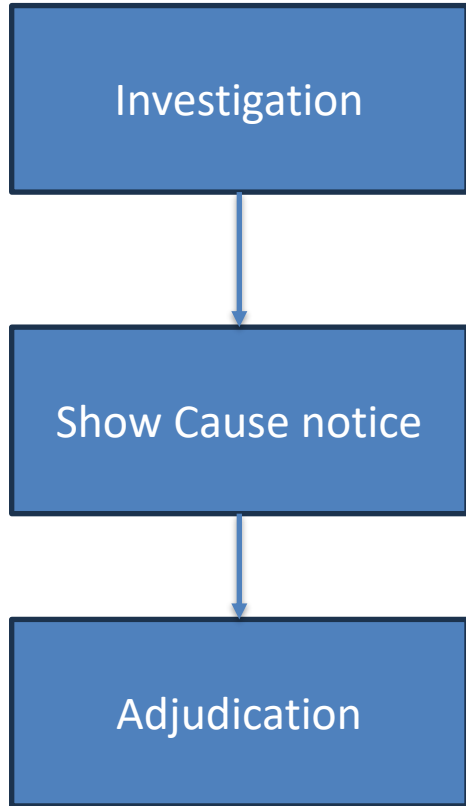
PURCHASE - TO CHECK TAX EVASION

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises **shall refund the amount so paid towards the goods** after cancelling any tax invoice or bill of supply issued earlier.

Test purchase by
GST Officers..



ADJUDICATION -PROCESS



- Section 2(4) **“Adjudicating authority”** means any authority, appointed or authorised to pass any order or decision under this Act,

ADJUDICATION -PROCESS



CIRCULAR NO. 31/05/2018-GST

As amended by CIRCULAR NO.169/01/2022-GST

Para - 6. *The Central Tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the **competent Central Tax officer of the executive Commissionerate in whose jurisdiction the noticee is registered** when such cases pertain to jurisdiction of one executive Commissionerate of Central Tax only.*

ADJUDICATION -PROCESS

Rasathe Garments v. State Tax Officer (ST) (Inspn.)

[2024] 163 taxmann.com 641 (Madras)

- ❑ There is no embargo under Scheme of GST Enactments on inspecting officer to issue Show Cause Notice or to adjudicate issue; however, with a view to eliminate scope of bias, inspecting officer is discharged from acting as an adjudicating officer.



THANK YOU



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