

Inspection Of Premises

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Outline

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Meaning of Inspection , Search & Seizure

- **‘Search’**

- Search, in tax/legal parlance, is an action of a tax officer to go and look through or examine carefully a place, person, object etc.
- To find something concealed or to discover evidence of a tax evasion or crime.

Meaning of Inspection , Search & Seizure

- **‘Inspection’**

- is the act of examining something, often closely.
- In tax/legal language, it is a softer provision than search.
- It enables officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner/operator of a warehouse or godown.

Meaning of Inspection , Search & Seizure

- **'seizure'**

- Not been specifically defined in GST.
- In legal parlance, seizure is the act of taking over something or someone by force through legal process, such as the seizure of evidence found related to tax evasion/crime.
- As per GST Act it is taking over of goods or books or documents or things
- It generally implies taking possession forcibly against the wishes of the owner.

Authorisation for Inspection

- Joint Commissioner and above cadre can issue
- Authorisation to be issued in Form INS -01
- When have reasons to believe that:
 - A taxable person
 - Suppressed transaction relating to supply of goods or services or both or stock of goods in hand
 - Claimed excess Input Tax Credit
 - Indulged in contravention of any provisions to evade tax

Authorisation for Inspection

- When have reasons to believe that:
 - Person engaged in bussiness of Transportation of goods or owner or operator of warehouse or godown or any other place
 - Keeping goods which has escaped payment of tax
 - Has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable

Search and Seizure

- To be authorized by officers not below the rank of Joint Commissioner.
 - It may be as a result of inspection or otherwise
 - If has reasons to believe that:
 - Any goods liable to confiscation
 - Documents or books or things , usefull or relevant to proceedings
- Are secreted in any place
- May authorize proper officer or can do it themselves

Search and Seizure

- Officer authorized shall have power to seal or break open
 - Door of any premises
 - Almirah
 - Electronic devices
 - Box
 - Receptable

Where officer suspects goods or documents or books are concealed and access is denied.
- Provisions related to search and seizure of Code of criminal procedure , 1973 is applicable

Seizure of Goods

- Goods liable to confiscation can be seized.
- If it is not practicable to seize any goods , may serve an order of Prohibition in Form GST INS 03 on owner or custodian of goods to keep them under their control.
- Goods seized can be released on provisional basis on:
 - Payment of tax , penalty , interest
 - Execution of bond and furnishing of security
- If no notice is issued after seizure of goods within 6 months , goods to be returned .
- Proper officer can extend by other 6 months.

Seizure of Goods

- The government may notify goods or class of goods which soon after the seizure can be disposed off by the proper officer
 - Perishable and hazardous nature
 - Depreciation of value of goods with time
 - Constraint of storage space or other reasons
- Proper inventory of such goods to be prepared

Seizure of Goods

- Bond and Security for release of goods:
 - Execution of Bond in Form GST INS 04 for value of goods
 - and
 - Security in form of bank guarantee equivalent to amount of tax, interest and penalty payable.
 - In case of failure to produce goods on appointed date and place after released provisionally, the security shall be encashed and adjusted against tax , penalty , interest payable in respect of such goods.

Seizure of documents or books

- If the books or documents or things seized or produced by the person, which is not relied upon in notice shall be returned back within 30 days of issue of notice
- The person from whose custody books or documents or things are seized shall be entitled to make copies or extracts therefrom in presence of authorised officer except when proper officer feels it will affect investigation.
- Order of seizure to be issued in Form INS 02

Seizure of documents or books

- When proper officer has reason to believe that any person has evaded or attempting to evade tax
- may for reasons recorded in writing seize the accounts registers or documents of such person produced before him
- The officer shall prepare inventory of goods or documents or books or things and get them signed from whom they are being seized.

Purchase of goods or services by commissioner

- Commissioner or any officer authorised by him can cause purchase of any goods or services or both
- Can be purchased by any person authorised by commissioner or officer authorised from business premises of any taxable person
- To check issue of tax invoice or bill of supply by taxable person
- On returns of such goods the taxable person shall refund the amount so paid towards goods after cancelling tax invoice or bill of supply.

Power to arrest (Section 69)

- Where the Commissioner has reasons to believe that a person has committed an offence of
 - Supplying any goods or services or both without issue of any invoice with the intention to evade tax;
 - Issues any invoice or bill without supply of goods or services or both leading to wrongful availment or utilisation of input tax credit or refund of tax;
 - Avails input tax credit using such invoice or bill

Power to arrest

- Collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

AND

- If the tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds Two hundred lakh rupees or Where any person convicted of an offence under section 132 is again convicted of an offence under the same section.
- Commissioner , by order, authorise any officer of state tax to arrest such person

Power to arrest

- Where a person is arrested for an offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees for reasons mentioned above, and where the offence is punishable with imprisonment for a term which may extend to five years and with fine.(The offence shall be cognizable and non-bailable)
- The officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours

Power to arrest

- Subject to the provisions of the Code of Criminal Procedure, 1973,--
 - where a person is arrested for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
 - In the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Power to summon persons to give evidence and produce documents (Section 70)

- The proper officer under this Act shall have 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 in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.
- Every such inquiry shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

Access to business premises (Section 71)

- For the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue authorized CGST/ SGST Officers may access any business premises to inspect: books of a/c documents, computers, computer programs, computer software etc. and such other things as he may require and which may be available at such premises.
- On demand by the audit officer / CA / Cost Accountant nominated by the Dept. for conducting the audit, the person needs to produce the records related to GST, trial-balance, audited financial reports, IT Reports, relevant records etc. within 15 working days from the date of demand

Officers to assist proper officers.(Section 72)

- All officers of
 - Police
 - Railways
 - Customs
 - Officers engaged in the collection of land revenue, including village officers,
 - Officers of central tax and officers of Union territory tax

shall assist the proper officers in the implementation of this Act.

- The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner

Quick Evaluation

- 1) Authorisation for inspection can be given by Deputy Commissioner
(True/ False)
- 2) Bond for release of seized goods to be issued in FORM GST INS 04
(True / False)
- 3) Can the seized goods be released on provisional basis upon execution of a bond
(True / False)
- 4) Who can give authorisation to proper officer for arresting a person:
a) Joint Commissioner b) Addl Commissioner(Grade I)
c) Commissioner d) Deputy Commissioner
- 5) The person from whose custody books or documents or things are seized shall have right to make copies or extracts on all times.
(True/False)

Quick Evaluation

- 6) It is not mandatory that 'reasons to believe' must exist before issuing authorization for Inspection or Search and Seizure by the proper officer?

True/False

- 7) The Officer is empowered to assist the proper officer.

a) Airport (b) Health (c) CBI (d) Police

- 8) Where any goods are seized 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:

True/False

- 9) If The Commissioner have caused purchase of services through a person from the business premises of a taxable person ,on return of above purchased services, such taxable person shall refund the amount so paid after cancelling any tax invoice issued earlier.

True/False

- 10) Which are the places of business / premises which can be inspected by the proper officer?

- (a) Any places of business of a taxable person
- (b) Any places of business of a taxable person engaged in the business of transporting goods
- (c) Any places of business of an owner or an operator of a warehouse or godown or any other place.
- (d) All of the above