

HOW TO HANDLE INVESTIGATIONS/AUDITS? LAW, PRACTICE & STRATEGY

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Self Assessment & Compliance

Transactional Compliances –
Eway Bill & E-Invoice

Statement of Outward
Supplies – GSTR I

Monthly Return - GSTR3B

Annual Return &
Reconciliation – GSTR 9& 9C

Pre- Adjudication

Scrutiny of Returns

Difference in Output Liability

Difference in ITC

Assessments

Department Audit

Inspection, Search & Seizure

eWay Bill Interception

Summons

Adjudication & Appellate Procedures

Pre SCN

Show Cause Notice

Adjudication Order

First Appellate Authority

Appeal to GSTAT

Appeal to High Court /
Supreme Court

Recovery Proceedings

Initiation of Proceedings

Recovery of Tax

Payment of Tax in Instalments

Provisional Attachment

Blocking of Electronic Credit
Ledger

Power to Arrest

SCRUTINY OF RETURNS



SCRUTINY OF RETURNS - SECTION 61

(1) The proper officer may scrutinize **the return and related particulars furnished by the registered person** to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74

See Also Rule 99, Forms ASMT-10,11,12

CBIC INSTRUCTION 2/2022 : INDICATIVE LIST OF PARAMETERS

1. Outward Tax : GSTR1 vs. GSTR3B
2. RCM : 3B vs. 2A, RCM in 3B vs. ITC of RCM in 3B, Cash Payment
3. ISD vs. 2A
4. ITC – 3A vs. 2B
5. 3B Value vs. TDS/TCS
6. Outward Supplies in 1/3B vs. EWB
7. ITC of vendors whose registration cancelled retrospectively
8. ITC of GSTR3B Non Filers
9. Delayed GSTR3B – ITC Impact
10. ITC on Imports vs. 2A/ICEGATE
11. Reversals u/r 42 & 43
12. Interest u/s 50
13. Late Fees

SCRUTINY - ISSUES

- Scope
 - Matters relating to Classification cannot be dealt in ASMT-10 -- Jothi Agency vs. State Tax Commissioner 66 GSTL 277 (Mad)
 - ASMT-10 can be based on external information like website – Dhanprakash Gupta 2023 (78) GSTL 389 (Del)
- Interplay with SCN
 - DRC-01 cannot be invoked on grounds different than in ASMT-10 - Vadivel Pyrotech Private Limited vs. Assistant Commissioner 2023 (68) GSTL 120 (Mad)
 - DRC-01 can be directly issued without ASMT 10 – Nagarjuna Agro Chemicals Pvt Ltd vs. State of UP 2023 (73) GSTL 584 (All), Devi Traders 2023 (75) GSTL 134 (AP)
 - If ASMT-10 issued, consider explanations before issuing SCN – Goverdhandham Estate Private Limited
- Whether Scrutiny of Returns can be conducted after initiation of Audit Proceedings? Writ Admitted – Gopeshwar Iron and Steel Works vs. Superintendent 2023 (77) GSTL 195 (Cal)

PRIMA FACIE DIFFERENCES

- DIFFERENCE IN OUTPUT LIABILITY –
RULE 88C – DRC-01B

- Tax Payable as per GSTR1 > Tax Paid as per GSTR3B
- Pay or Provide Reasons within 7 days
- If not paid or reasons not explained, recovery under section 79 could be initiated

- DIFFERENCE IN ITC – RULE 88D –
DRC-01C

- ITC as per GSTR3B > ITC as per GSTR 2B
- Pay or Provide Reasons within 7 days
- If not paid or reasons not explained, amount liable to be determined under Section 73/74

ASSESSMENTS



ASSESSMENT OF NON FILERS – SECTION 62

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgment taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within [sixty days] of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

[**Provided** that where the registered person fails to furnish a valid return within sixty days of the service of the assessment order under sub-section (1), he may furnish the same within a further period of sixty days on payment of an additional late fee of one hundred rupees for each day of delay beyond sixty days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under sub-section (1) of section 50 or to pay late fee under section 47 shall continue.]

See Also: Rule 100, ASMT-13

SOME ISSUES

- An Order cannot be issued without issuance of a notice - Vinman Constructions Limited vs. State of Jharkhand 2022 (61) GSTL 403 (Jhar)
- Penalty cannot be imposed in the best judgement assessment - SPY Agro Industries Limited vs. Union of India (2022) 63 GSTL 190 (AP)
- Assessment orders to be automatically recalled if returns filed within time frame – Abra Film International vs. Union of India
- Assessment orders cannot be recalled if returns filed after the time frame – Softouch Health Care Pvt Ltd.Vs. State Tax Officer (2020) 39 GSTJ 497
- No scope to extend period prescribed u/s 62 for filing the return – Bridge Hygiene Services Private Limited vs. State Tax Officer (2019) 36 GSTJ 441 (Ker)

OTHER PROVISIONS FOR ASSESSMENT

- Section 63 – Best Judgement Assessment of Unregistered Person after issuance of Show Cause Notice
 - Cannot be invoked for a registered person – Jogesh Kumar Dehury vs. Addl CT 2023 (74) GSTL 419 (Ori)
- Section 64 – Protective Assessment – can be withdrawn on pointing out the error within 30 days
- Section 60 – Provisional Assessment – where value or rate cannot be determined by the taxpayer – application to be accepted within 90 days and final tax to be determined within 6 months of acceptance of provisional assessment application

DEPARTMENT AUDIT



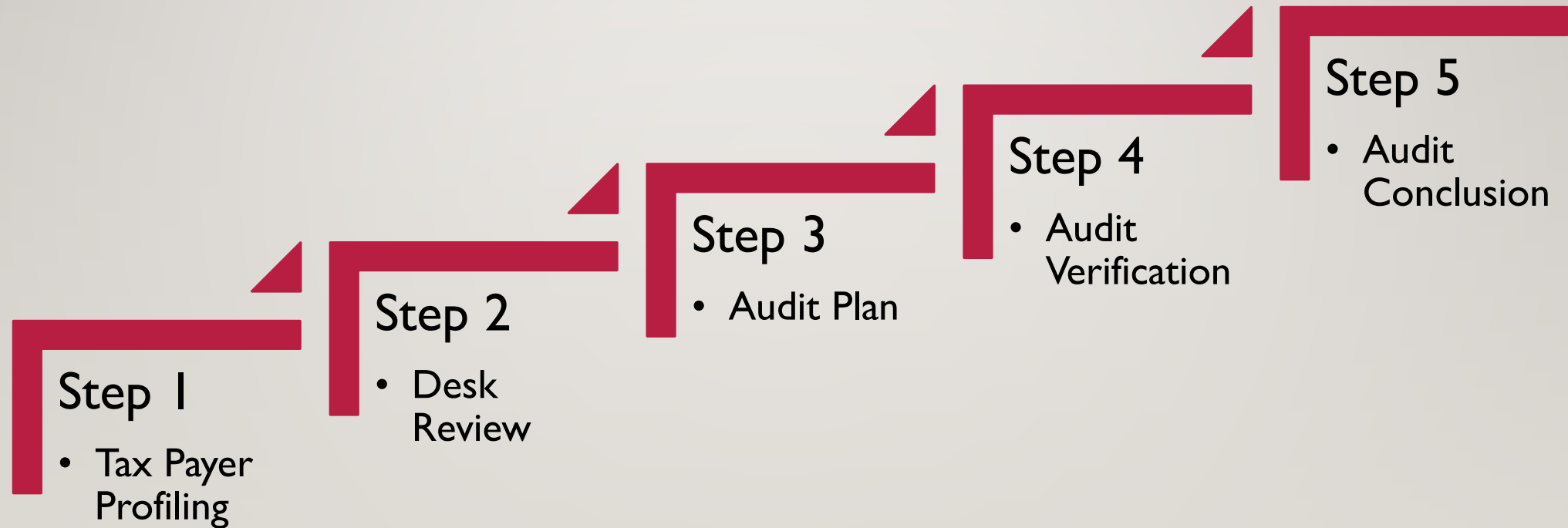
DEPARTMENT AUDIT – SECTION 65(I)

- The Commissioner or any officer authorised by him,
 - Notification 2/2017-CT dated 19.06.2017
- by way of a general or a specific order,
- may undertake audit of any registered person
- for such period,
- at such frequency and
- in such manner as may be prescribed

DEPT.AUDIT – STAT PROVISIONS (CONTD.)

2. The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.
3. The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.
4. The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit
5. During the course of audit, the authorised officer may require the registered person, — (i) to afford him the necessary facility to verify the books of account or other documents as he may require; (ii) to furnish such information as he may require and render assistance for timely completion of the audit.
6. On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.
7. Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

STEPS INVOLVED



STEP I :TAX PAYER PROFILING

- Filing of GSTAM – I
 - Parts I & II – Basic Taxpayer Information
 - Part III – Summary Details of Supplies and Taxes
- Issuance of Intimation of the Commencement of Audit to Taxpayer in ADT-01

STEP 2 : DESK REVIEW

- Analyse information in GSTAM – I
- Call for documents as per GSTAM – III (Annual Report, P&L, Balance Sheet, Notes to Accounts, Trial Balance, Cost Audit Report, Tax Audit Report, TDS Statement – Form 26AS)
- Testing of Income and Exemptions Claimed
- Reconciliation of Input Tax Credit – Form 3B vs. 2A – Balance to verify at supplier end – Paras 5.5.4 & 5.8.3 of GSTAM)
- Ratio Analysis – GSTAM – IV
- Reconciliation of third party data – GSTAM – V
- Revenue Risk Analysis - Based on industry reports
- Trend Analysis

STEP 3 :AUDIT PLAN

- Based on tax payer profiling and desk review, prepare audit plan
- Indicative Audit Plan suggested as GSTAM –VII
- Get the same internally reviewed and approved
- Proceed with the next step of ‘audit verification’

STEP 4: AUDIT VERIFICATION

- Review of Internal Controls
- Walkthrough of Transactions – GSTAM – VI (Inward Supplies, Outward Supplies, Stores, Tax Accounting, Job Work Transactions)
- Filling the Questionnaire (General, Invoicing Process, Accounts and Records, GST Returns, Place of Supply, Valuation, MIS)
- ABC Analysis
- Transaction and Document Verification
- Interim Communication of Shortcomings – Rule 101(4)

STEP 5 :AUDIT CONCLUSION

- Verification Report – GSTAM VIII
- Draft Audit Report to be placed before Monitoring Committee
- Final Audit Report to be issued
- Conclusion of Audit to be communicated in ADT-02
- Show Cause Notice for open ended points

ISSUES IN DEPARTMENT AUDIT

- Can Audit be conducted after registration is cancelled?
 - The section uses 'registered person' and hence no audit can be conducted after cancellation of registration – Raja Stores 2023 (77) GSTL 367 (Mad)
- It is mandatory to consider the submissions before issuance of final audit report – PBL Transport Corporation Private Limited 2024 (82) G.S.T.L. 131 (A.P.)
- Mandatory to provide 15 days time before initiating the audit and issuance of show cause notice - Vardhman Gold 2024 (81) G.S.T.L. 375 (A.P.)

INSPECTION, SEARCH & SEIZURE



INSPECTION OF PLACE OF BUSINESS – SECTION 67(I)

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

PROPER OFFICER :

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, **subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify**

(2)(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter

GST Council, in its meeting held during January, 2017, decided that both the Central and State tax administrations have the power to take intelligence-based enforcement action in respect of the entire value chain. Based on such decision of the GST Council, the C.B.E. & C. issued clarification dated 5-10-2018

Whether cross empowerment is effective?

Whether parallel proceedings are valid?

CROSS EMPOWERMENT

- Notification No. 39/2017-C.T., dated 13-10-2017
 - Respective State Tax Officers shall act as proper officers for the purpose of sanction of refund under section 54 or section 55 of the CGST Act read with the rules made thereunder except rule 96 of the Central Goods and Services Tax Rules, 2017, in respect of a registered person located in the territorial jurisdiction of the said officers who applies for the sanction of refund to the said officers
- C.B.I. & C. Letter F. No. CBEC-20/10/07/2019-GST, dated 22-6-2020
 - If no notification is issued to impose any condition, it means that the officers of State and Centre have been appointed as proper officer for all the purposes of the CGST Act and SGST Acts
- Cross empowerment under section 6 requires notification. In absence of notification, DGGI does not authority over assessee registered under State jurisdiction.
 - Vardhan Infrastructure –2024 16 CENTAX 509

PARALLEL PROCEEDINGS – WHETHER VALID?

- Yes, both the authorities can simultaneously investigate
 - Kuppan Gounder vs. DGGI 2022 (58) GSTL 292 (Mad HC)
 - Sanganeria Spinning Mills Ltd.Vs. UoI 28 GSTL 442 (Raj HC)
 - Dadichi Iron & Steel vs. Chattisgarh GST 35 GSTL 4 (Chattisgarh)
 - Yasho Industries vs. Union of India 2021 (54) GSTL 19 (Guj HC)
- No, only one of the authorities can investigate on the same subject matter
 - Raj Metal Industries vs. Union of India 5 GSTJ 171 (Cal HC)
 - Vipulchandra Purshottamdas Mahant 2023 (79) G.S.T.L. 93 (Guj.)

JURISDICTION - NOT BELOW THE RANK OF JOINT COMMISSIONER ..

- Mahendra kumar Indermal vs. Asst. Commr. 2020 (37) GSTL 168 (AP)
- Prakashsinh Hathisinh Udavat vs. State of Gujarat 2019 (31) GSTL 583 (Guj)
- Golden Cotton Industries vs. Union of India 2019 (29) GSTL 587 (Guj)
- Pioneer Co-op Car Parking Society vs. State of WB 2019 (28) GSTL 193 (Cal)

INSPECTION OF PLACE OF BUSINESS – SECTION 67(I)

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- (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

REASONS TO BELIEVE

- Section 26 IPC: A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.
- The existence of 'reason to believe' is subject only to a limited scrutiny and the Court cannot substitute its own opinion for that of the officer carrying out Inspection.
 - Balwant Singh Vs R.D. Sharma [1969] 71 ITR 550 (Delhi)
 - DDIT Vs Mahesh Kumar Agarwal [2003] 262 ITR 338 (Cal)
 - Golden Cotton Industries Versus Union Of India 2019 (29) G.S.T.L. 587 (Guj.)
 - RCI Industries and Technologies Ltd. V. Commissioner DGST Delhi 2021 (46) G.S.T.L. 123 (Del.)

COPY OF REASONS CAN BE DEMANDED?

- **DGIT(I) Vs Spacewood Furnitures (P) Ltd [2015] 57 taxmann.com 292 (SC):**
 - Recording of reasons is necessary so as to ensure accountability and responsibility in the decision making process.
 - However, that by itself would not confer in the assessee a right to communication of the reasons for the belief at the stage of issuing of the authorization.
 - Any such view would be counter productive of the entire exercise contemplated in the search provisions.
 - It is only at the stage of commencement of the assessment proceedings after completion of the search and seizure, if any, that the requisite material may have to be disclosed to the assessee.

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AUTHORISE IN WRITING

- Authorisation issued to company.
Attachment of director's bank a/c invalid
– Praful Nanji Satra vs. State of Maharashtra 2021 50 GSTL 133 (Bom)
- Does not require DIN – Suresh Kumar PP vs. DGGI 2021 50 GSTL J73 (SC)

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
- 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 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 section 179, 181, 191 and 418 of the Indian Penal Code.

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

Seal
Place
Name, Designation & Signature of the Inspection Officer/s
(i)
(ii)

Signature, Name and designation of the issuing authority

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PLACE OF BUSINESS– MEANING OF

- Section 2(85) CGST Act: “Place of business” includes:
 - A place from where the business is ordinarily carried on, and includes a warehouse, a godown or **any other place** where a taxable person stores his goods, supplies or receives goods or services or both; or
 - A place where a taxable person maintains his books of account; or
 - A place where a taxable person is engaged in business through an agent, by whatever name called.

WHETHER ILLEGAL SEARCH VITIATES SEIZURE AND SUBSEQUENT PROCEEDINGS?

- **Radhakrishnan Vs State of UP AIR 1963 SC 122**: Even if search is illegal, the seizure of articles and further trial is not vitiated. If search provisions are violated, only the following two consequences could ensue:
 - The person whose premises is sought to be searched can, at best, **resist search**.
 - Because of the illegality of the search the Court may be **inclined to examine carefully the evidence** regarding the seizure.
- **State of MP Vs Patlan Mallah 2005 CrLJ 918 SC**: Illegality in search does not vitiate search unless it had caused prejudice to the accused. Merely because the accompanying witness is not from the same locality, search evidence cannot be disregarded.
- **ACCE Vs Wilfred Sebastian 1983 (12) ELT 122 (Ker)**: On examination, if the evidence regarding the seizure of the articles is found to be satisfactory and acceptable, it will not be in the interests of justice to ignore altogether that evidence.

SECTION 67(2) – SEARCH AND SEIZURE

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

GOODS LIABLE TO CONFISCATION OR ANY DOCUMENTS OR BOOKS OR THINGS

- Kanishka Matta v. Union of India 2020 (42) G.S.T.L. 52 (M.P.)
 - “The word “things” appears in Section 67(2) of the CGST Act, 2017 is to be given wide meaning and as per Black’s Law Dictionary, 10th Edition, any subject matter of ownership within the spear of proprietary or valuable right, would come under the definition of “things” (page No. 1707). Similarly, Wharton’s Law Lexicon at page No. 1869 and 1870, the word “things” has been defined and it includes “money”.
- State Tax Officer vs. Shabu George 2023-VIL-74-SC
 - In an investigation aimed at detecting tax evasion under the GST Act, cash cannot be seized especially when it is the admitted case that the cash did not form part of the stock in trade of the appellant's business

SECRETED...

- Gian Chand v. State of Punjab [1962] Supp. I S.C.R. 364
 - “...It cannot be said that the documents have not been ‘secreted’ within the meaning of Section 105 of the Customs Act unless they are hidden or concealed. In the context of the section the word means ‘documents which are not kept in the normal or usual place’ or it may even mean ‘documents or things which are likely to be secreted’; in other words documents or things which a person is likely to keep out of the way or to put in a place where the officer of the law cannot find it.”
- Rajeev Traders v. State of U.P. 2019 (29) G.S.T.L. 9 (All.)
 - In the context of the Act based on a scheme for self-assessment, the word ‘secreted’ plainly implies to be hidden or not disclosed to the Revenue authorities for the purposes of making a fair self-assessment. Once the dealer does not record the goods in his regular books of account, a presumption arises that he does not intend to disclose the same to the Assessing Authority or the Revenue for the purpose of making a fair selfassessment of his turnover

‘SECRETED’

-
- **Durga Prasad Vs H.R. Gomes AIR 1966 SC 1209 (1216)** – In the context of Section 105(I) Customs Act:
 - ‘Secreted’ means documents which are kept not in the normal or usual place, with a view to conceal them.
 - It may even mean documents or things which are likely to be secreted.
 - It includes, documents or things which a person is likely to keep out of the way or to put in a place where the officer of law cannot find it.
 - What can be called from an assessee in the normal course should not be recovered from him under search proceedings.

SEIZURE

- Seizure can happen only if search is conducted u/s 67(2). Seizure cannot happen merely on inspection u/s 67(1)
 - Rajeev Traders v. State of U.P. 2019 (29) G.S.T.L. 9 (All.)
- Search u/s 67(2) may follow inspection u/s 67(1) or it may be an independent proceeding directly initiated
- Considering the provisions referred to hereinabove, it is apparent that the officer who is armed with a search warrant is authorised to search the premises referred to in the warrant of authorisation and to seize goods, documents, articles or things, which are useful for or relevant to any proceedings under the GST Acts. The provisions nowhere arm the officer, in whose favour the authorisation is issued, to search for any person or to remain in the premises after the search is over, or to monitor what the persons residing in the premises are doing and to reside in the premises
 - Paresh Nathalal Chauhan V. State Of Gujarat 2020 (36) G.S.T.L. 498 (Guj.)
- As rightly pointed out by the Learned Amicus Curiae, the only power to record statements is traceable to Section 70 of the GST Acts which requires the concerned officer to issue summons to the person whose statement is sought to be recorded by following due procedure in accordance with law, and thereafter record his statement
 - Paresh Nathalal Chauhan V. State Of Gujarat 2020 (36) G.S.T.L. 498 (Guj.)

SEIZURE – WHAT NEXT?

- Goods to be released on Bond/Security – Section 67(6)
- Goods to be returned within six months if no notice issued – Section 67(7)
- Hazardous Goods may be disposed off by the Government – Section 67(8)
- Seizure is different from confiscation – title vests with Government
 - Confiscated goods can be released on payment of redemption fine

BOARD INSTRUCTIONS

- Instruction No. 01/2020-21 dt. 02.02.2021
 - The premises of a person cannot be searched on the authority of a search warrant issued for the premises of some other person. Where a search warrant, through oversight, has been issued in the name of a person who is already dead, the authorised officer should report to the Competent Authority and get a fresh warrant issued in the names of the legal heirs
 - In case of search of a residence, a lady officer shall necessarily be part of the search team
 - The search authorization shall be executed before the start of the search and the same shall be shown to the person in charge of the premises to be searched and his/her signature with date and time shall be obtained on the body of the search. The signatures of the witnesses with date and time should also be obtained on the body of the search authorization
 - 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 Panchama
 - 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 incharge of the premises being searched and acknowledgement in this regard may be taken. 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.

BOARD INSTRUCTIONS (CONTD.)

- Circular No. 128/47/2019-GST dt. 23.12.2019
 - Accordingly, the Board directs that all field formations shall use the standardized authorisation for search, summons, inspection notice, arrest memo and provisional release order
 - The Board once again directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in paragraph 3 of Circular 122/41/2019-GST dated 05.11.2019, shall be treated as invalid and shall be deemed to have never been issued
- Instruction No. 01/2022-23 dt. 25.05.2022
 - Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings
 - However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short payment of taxes before or at any stage of such proceedings

INTERIM PAYMENTS UNDER DURESS

- Whether payments can be forced during search?
 - No recovery during the search process. If the assessee wants to make voluntary payments, he can do through DRC-03 on the next day – Bhoomi Associates vs. UoI 2021-TIOL-HC-AHM
 - Admitted Tax Statement under duress cannot mean self assessment – Shri Nandhi Dhal Mills India vs. SIO 2021-TIOL-828-HC-MAD
- Whether voluntary payments can be made by registering protest?
- How to make the payment?
 - DRC-03 or GSTR 3B?
 - Mentioning Section 73 or Section 74?
 - Through Electronic Cash Ledger or Electronic Credit Ledger?
- Whether subsequent refund can be claimed?

SUMMONS



SUMMONS AND EVIDENCE [SECTION 70]

- **For what summons can be issued:** For any inquiry. Such inquiry is a “judicial proceeding” within the meaning of Section 193 & 228 IPC.
 - **Section 193 IPC:**Whoever intentionally gives false evidence in judicial proceeding shall be punished with imprisonment of term which may extend to 7 years + fine.
 - **Section 228 IPC:** Insult or interruption of public servant in a judicial proceeding punishable for upto 6 months imprisonment or fine upto Rs. 1000 or both.
- **To whom summons can be issued:** Any person whose attendance he considers necessary:
 - To give evidence
 - To produce any document or any other thing.
- **P. Rustamji v. State of Maharashtra - AIR 1971 S.C. 1087**
 - Officer making an enquiry not a police officer and the person against whom enquiry is made is not an accused person
 - The object of such an enquiry is to ascertain facts
 - That is why even a person who has nothing to do with the actual transaction can also be summoned in an enquiry to ascertain facts

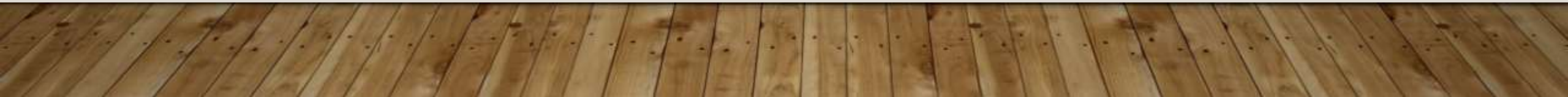
SUMMONS : BOARD INSTRUCTION - 3/2022

- Summons issued by Superintendents – prior approval of Deputy/Assistant Commissioner is necessary
- Record Appearance / Non Appearance in the file along with copy of statement recorded
- Preferably indicate the name of the offender
- Avoid Summons for information available on the portal
- senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue
- Quoting of DIN is mandatory
- Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded
- Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.

FAKE INVOICING - CLARIFICATIONS

- Supplier issues fake invoice without underlying supply of goods/services
 - No SCN u/s 73 or 74 since no tax is payable
 - Penalty u/s 122(1)(ii) can be imposed
- Recipient accounts for fake invoice, but corresponding outward supply is genuine
 - Liable for reversal of input tax credit and SCN u/s 74
 - No Action u/s 122
- Recipient accounts for fake invoice, with further outward fake invoice
 - No SCN u/s 73 or 74 since no tax is payable – both legs are fake
 - Penalty u/s 122(1)(ii) & 122(1)(vii)
- In specific cases, prosecution u/s 132 can be initiated

ARREST



ARREST – S. 69

- Where the **Commissioner** has **reasons to believe** that **a person** has **committed any offence** specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person

OFFENCES

| Nature of Offence | > 5 Crores | 2.5-5 Crores | 1-2.5 crores | Other Cases |
|---|------------|--------------|--------------|-------------|
| Punishment | 5 years | 3 years | 1 year | 6 mths |
| (a) Supplies Goods or Services without Invoice | C & NB | NC & B | | |
| (b) Issues Invoice without Supply | C & NB | NC & B | NC & B | |
| (c) Avails Input Tax Credit relating to a/b | C & NB | NC & B | | |
| (d) Collects but does not pay tax for 3 months | C & NB | NC & B | | |
| (e) Evades tax or fraudulently obtains refund | NC & B | NC & B | | |
| (f) Falsifies Documents | NC & B | NC & B | NC & B | NC & B |
| (h) Connected with goods liable for confiscation | NC & B | NC & B | | |
| (i) Connected with Supply which is contravention of law | NC & B | NC & B | | |
| (l) Attempts or Abets any of the above | NC & B | NC & B | | |

ARREST : CBIC INSTRUCTIONS : PRECONDITIONS

- Any of the specified Offences has been committed
- Reasons to believe should be unambiguous and based on credible material
- Arrest should be necessary
 - For investigation
 - For Appearance
 - As the person can tamper the records
 - Mastermind of a larger racket
- Not in case of technical matters like interpretation of law

ADJUDICATION



SHOW CAUSE NOTICE – SECTION 73 / 74

- Show Cause Notice can be issued in the following situations:
 - Tax has not been paid or short paid
 - Tax has been erroneously refunded
 - Input tax credit has been wrongly availed or utilized for any reason
- Section 74 attracted when:
 - Fraud
 - Wilful misstatement
 - Suppression of facts to evade tax - non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer

SCN & OIO - TIMELINES

| | TIMELINE FOR ISSUANCE OF SCN | TIMELINE FOR ISSUANCE OF OIO |
|--|-------------------------------------|--|
| Section 73 | Three months prior to OIO | Three years from the due date of furnishing annual returns |
| Section 74 | Six months prior to OIO | Five years from the due date of furnishing annual returns |
| Timelines under Section 73 extended thru Notification 9/2023-CT & 56/2023-ct | | |
| 2017-2018 | 30.09.2023 | 31.12.2023 |
| 2018-2019 | 31.01.2024 | 30.04.2024 |
| 2019-2020 | 31.05.2024 | 31.08.2024 |

TIMELINES

| | DUE DATE OF ANNUAL RETURN | SECTION 73 SITUATION | | SECTION 74 SITUATION | |
|-----------|---------------------------|----------------------|------------|----------------------|------------|
| | | SCN | OIO | SCN | OIO |
| 2017-2018 | 05.02.2020 | 30.09.2023 | 31.12.2023 | 05.08.2024 | 05.02.2025 |
| 2018-2019 | 31.12.2020 | 31.01.2024 | 30.04.2024 | 30.06.2025 | 31.12.2025 |
| 2019-2020 | 31.03.2021 | 31.05.2024 | 31.08.2024 | 30.09.2025 | 31.03.2026 |
| 2020-2021 | 28.02.2022 | 28.11.2024 | 28.02.2025 | 28.08.2026 | 28.02.2027 |
| 2021-2022 | 31.12.2022 | 30.09.2025 | 31.12.2025 | 30.06.2027 | 31.12.2027 |
| 2022-2023 | 31.12.2023 | 30.09.2025 | 31.12.2026 | 30.06.2028 | 31.12.2028 |

SCN - PROCESS

- Pre-SCN Intimation – DRC-01A
- SCN –DRC-01
- Reply to SCN
- Personal Hearing
- Adjudication Order OIO – DRC-07

ADJUDICATION PROCESS – PENALTIES ON EXIT

| | SECTION 73 CASES | SECTION 74 CASES |
|-----------------------------------|--|-------------------------|
| Before Issuance of SCN | NIL | 15% of Tax |
| Within 30 days of Issuance of SCN | NIL | 25% of Tax |
| After 30 days of Issuance of SCN | 10% of Tax or Rs. 10000 whichever is higher | 25% of Tax |
| Within 30 days of Issuance of OIO | 10% of Tax or Rs. 10000 whichever is higher | 50% of Tax |
| Thereafter | 10% of Tax or Rs. 10000 whichever is higher | 100% of Tax |

APPEALS



FIRST APPELLATE AUTHORITY

- Appeal to be filed within 3 months from the date of communication of order APL-01
- Delay of one month can be condoned on reasonable grounds
- Pre-deposit & Deemed Stay
 - Full amount of admitted tax and interest
 - 10% of disputed tax

TRIBUNAL

- Appeal to be filed within 3 months from the notified date
- Pre-deposit & Deemed Stay
 - Full amount of admitted tax and interest
 - Additional 20% of disputed tax- proposed to be reduced to additional 10%

THANK YOU

