

ENFORCEMENT: ROLE IN GST

The Directorate of Enforcement or Enforcement Directorate (ED) is a domestic law enforcement agency and economic intelligence agency responsible for enforcing economic laws and fighting economic crimes in India. It is part of the Department of Revenue, Ministry of Finance, Government Of India. The role of the ED is to ensure that India's financial system runs smoothly without any illegal activities. Hence, the agency can use its power to take action against fraud and enforce economic laws to protect the citizens and the economy. If the tax authorities have a reason to believe that the taxpayer has evaded tax, wrongly claimed inputs, suppressed his income or violated any of the provisions of the GST Act to evade tax, then he/she can start enforcement proceedings. Enforcement under GST involves an entire set of actions taken by the tax authorities to curb tax evasion. It includes calling for information, issue of notice, issue of summons, recording statements, search and seizure of goods, etc. The different types of enforcement cases can be broadly classified as inspection, search, seizure and arrest. The DGCI is the apex intelligence and investigative agency for matters relating to violation of the Goods & Services Tax, Central Excise Duty and Service Tax.

Keeping in mind the government's anti-tax evasion scheme, GST also has strict provisions to inspect and search places of business for suspected tax evaders. A Joint Commissioner (or an officer of higher rank) may have "reasons to believe" that in order to evade tax, any person has done the following-

- Suppressed any transaction of supply
- Suppressed stock in hand
- Claimed input tax credit in excess
- Violated of any of the provisions
- Any transporter or owner/operator of a warehouse has kept goods that have escaped tax payment or have kept accounts and/or goods in such a way as to evade tax

Then he can authorise any officer in Form GST INS-01 to inspect places of businesses of the taxable person or

- the transporter or
- owner/operator of warehouse

'Reason to believe' means having knowledge of facts (although does not mean having direct knowledge), that would make any reasonable person, knowing the same facts, to reasonably conclude the same thing. As per the Indian Penal Code, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise." Reason to believe is a determination based on intelligent examination and evaluation. It is different from a purely subjective consideration, i.e., an opinion. It is based on facts rather than an interpretation of facts.

GST Act does not mention recording the reasons to believe. In fact, Finance Act 2017 has amended Sec 132(1) & (1A) of Income Tax Act retrospectively stating, that reason to believe, shall not be disclosed to any person or any authority or the Appellate Tribunal.

The difference between search & inspection

'**Search**' involves an attempt to find something. Search, in tax/legal parlance, is an action of a government official (a tax officer or a police officer, depending on the case) to go and look through or examine carefully a place, person, object etc. in order to find something concealed or to discover evidence of a crime. The search can only be done under the proper and valid authority of law.

'**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.

On the basis of results of inspection or any other reason, Joint Commissioner of SGST/CGST or a superior officer can order for a search if he has "reasons to believe" –

- There are goods which are liable for confiscation
- Any documents or books or other things which will be useful during proceedings and are hidden somewhere

He can, on his own or through an authorized officer, search and seize the goods and documents.

The term 'seizure' has 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 at the scene of a crime. It generally implies taking possession forcibly against the wishes of the owner.

The difference between Seizure and Detention

Not allowing the owner any access to the seized goods by a legal order/notice is called detention. However, the ownership & possession of goods still lie with the owner. It is issued when it is suspected that the goods are liable to confiscation. Seizure is taking over or actual possession of the goods by the department. But the ownership is still with the owner. Seizure can be made only after inquiry/investigation that the goods are liable to confiscation.

The proper officer will give an order of seizure in FORM GST INS-02.

The powers of the officer authorized to search

The officer authorized to search will have the power to seal the door of the premises. He can also break open the door of any premises if access is denied. He can also break open any cupboard or box in which goods, books, documents etc. are suspected to be concealed. If it is not practicable to seize the goods, the proper officer will order the owner not to remove these goods without prior permission of the officer. The officer will issue an order of prohibition in FORM GST INS-03.

Duration of keeping the books/documents with the officer

The officer will keep the books and documents as long as it is necessary for examination and inquiry. Other books which are not relevant to the issue of notice will be returned within 30 days from the date of notice. The seized goods can be released on a provisional basis against a bond for the value of the goods in FORM GST INS-04. The owner must also furnish a security in the form of a bank guarantee for the amount due (applicable tax, interest and penalty payable). If the owner fails to produce the provisionally released goods at the appointed date and place then the security will be encashed and adjusted against the amount due.

Procedures to be followed after seizure

- The person, whose documents are seized, can make copies only in the presence of an officer.
- If notice is not issued within six months (extendable by 6 more months) of the seizing the goods, they will be returned.
- The Government can issue a list of hazardous or perishable goods which can be disposed off as soon as they are seized.
- All goods seized will be listed properly by the officer.

Application of the Code of Criminal Procedure

The provisions of the Code of Criminal Procedure will apply to search and seizure.

Other ways to check/inspect

The Commissioner or an authorized officer can purchase any goods and/or services from a taxable person. This will be done to check the issue of tax invoices, whether they are maintained correctly, and whether GST amount is clearly displayed. When the goods are returned, the amount will have to be refunded by the taxable person and the sales invoice will be cancelled.

Arrest under GST

If the Commissioner **believes** a person has committed an offence u/s 132, the offender can be arrested under GST.

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