

Inspection, Search, Seizure and Arrest-GST

1. In any tax administration the provisions for Inspection, Search, Seizure and Arrest are provided to protect the interest of genuine tax payers (as the Tax evaders, by evading the tax, get an unfair advantage over the genuine tax payers) and as a deterrent for tax evasion. These provisions are also required to safeguard Government's legitimate dues. Thus, these provisions act as a deterrent and by checking evasion provide a level playing field to genuine tax payers.
2. It may be mentioned that the options of Inspection, Search, Seizure and Arrest are exercised, only in exceptional circumstances and as a last resort, to protect the Government Revenue. Therefore, to ensure that these provisions are used properly, effectively and the rights of tax payers are also protected, it is stipulated that Inspection, Search or Seizure can only be carried out when an officer, of the rank of Joint Commissioner or above, has reasons to believe the existence of such exceptional circumstances. In such cases the Joint Commissioner may authorise, in writing, any other officer to cause inspection, search and seizure. However, in case of arrests the same can be carried out only where the person is accused of offences specified for this purpose and the tax amount involved is more than specified limit. Further, the arrests under GST Act can be made only under authorisation from the Commissioner.
3. The circumstances which may warrant exercise of these options are as follows: -

(i) Inspection

'Inspection' is a softer provision than search which enables officers to access any place of business or of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown. As discussed above the inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following actions:

- (a) Suppression of any transaction relating to supply of goods or services or stock in hand
- (b) Claimed excess input tax credit
- (c) Contravention of any provisions of the Act or the Rules to evade tax
- (d) Transporting or keeping goods which escaped payment of tax or manipulating accounts or stocks which may cause evasion of tax

Inspection can also be done of the conveyance, carrying a consignment of value exceeding specified limit. The person in charge of the conveyance has to produce documents/devices for verification and allow inspection. Inspection during transit can be done even without authorisation of Joint Commissioner.

(ii) Inspection in movement

- (a) Any consignment, value of which, is exceeding Rs. 50,000/-, may be stopped at any place for verification of the documents/ devices prescribed for movement of such consignments.
- (b) If on verification of the consignment, during transit, it is found that the goods were removed without prescribed document or the same are being supplied in contravention of any provisions of the Act then the same can be detained or seized and may be subjected to penalties as prescribed.
- (c) To ensure transparency and minimise hardships to the trade, the law provides that if during verification, in transit, a consignment is held up beyond 30 minutes the transporter can feed details on the portal.

This will ensure accountability and transparency for all such verifications. Moreover, for verification during movement of consignment will also be done through a Digital interface and therefore the physical intervention will be minimum and as has already been mentioned that in case of a delay beyond 30 minutes the transporter can feed the details on the portal.

(iii) Search & Seizure

The provisions of search and seizure also provides enough safeguards and the GST Law stipulates that search of any place of business etc. can be carried out only under authorisation from an officer not below the rank of Joint Commissioner and if he has a reason to believe that the person concerned has done at least one of the following:-

- (a) Goods liable to confiscation or any documents/ books/record/things, which may be useful for or relevant to any proceedings, are secreted in any place then all such places can be searched
- (b) All such goods/documents/books/record/things may be seized, however, if it is not practicable to seize any such goods then the same may be detained. The person from whom these are seized shall be entitled to take copies/extracts of seized records
- (c) The seized documents/books/things shall be retained only till the time the same are required for examination/enquiry/proceedings and if these are not relied on for the case then the same shall be returned within 30 days from the issuance of show cause notice
- (d) The seized goods shall be provisionally released on execution of bond and furnishing a security or on payment of applicable tax, interest and penalty
- (e) In case of seizure of goods, a notice has to be issued within six months, if no notice is issued within a period of six months then all such goods shall be returned. However, this period of six months can be extended by Commissioner for another six months on sufficient cause.
- (f) An inventory of the seized goods/documents/ records is required to be made by the officer and the person, from whom the same are seized, shall be given a copy of the same.
- (g) To ensure that the provisions for search and seizure are implemented in a proper and transparent manner, the Act stipulates that the searches and seizures shall be carried out in accordance with the provisions of Criminal Procedure Code, 1973. It ensures that any search or seizure should be made in the presence of two or more independent witnesses, a record of entire proceedings is made and forwarded to the Commissioner forthwith.

(iv) Arrests

In the administration of taxation the provisions for arrests are created to tackle the situations created by some unscrupulous tax evaders. To some these may appear very harsh but these are necessary for efficient tax administration and also act as a deterrent and instil a sense of discipline. The provisions for arrests under GST Law have sufficient inbuilt safeguards to ensure that these are used only under authorisation from the Commissioner. Besides this, the GST Law also stipulates that arrests can be made only in those cases where the person is involved in offences specified for the purposes of arrest and the tax amount involved in such offence is more than the specified limit. The salient points of these provisions are:

- (a) Provisions for arrests are used in exceptional circumstance and only with prior authorisation from the Commissioner.
- (b) The law lays down a stringent criteria and procedure to be followed for arresting a person. A person can be arrested only if the criteria stipulated under the law for this purpose is satisfied i.e. if he has committed specified offences (not any offence) and the tax amount is exceeding rupees 200 lakhs. However, the monetary limit shall not be applicable if the offences are committed again even after

being convicted earlier i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

(c) Further, even though a person can be arrested for specified offences involving tax amount exceeding Rs. 200 lakhs, however, where the tax involved is less than Rs. 500 lakhs, the offences are classified as non-cognizable and bailable and all such arrested persons shall be released on Bail by Deputy/Assistant Commissioner. But in case of arrests for specified offences where the tax amount involved is more than Rs. 500 lakhs, the offence is classified as cognizable and non-bailable and in such cases the bail can be considered by a Judicial Magistrate only.