



Session 5

Administering GST : Inspection, Search, Seizure, Arrest, Penalties, Prosecution & Compounding

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Powers of Officers during Investigation

- **Search**
- **Seizure**
- **Summon persons to give evidence and produce documents**
- **Detention and Arrest**
- **Power to seek deposits during investigation before issuance of show cause notice**

Power of Inspection: [Section 67 of CGST Act]

- Where the proper officer has 'reason to believe' that:
 - There is suppression of transaction relating to 'supply'; or
 - Inadmissible input tax credit has been claimed; or
 - Contravention of provision of the act or rules to evade tax; or
- Inspection of 'place of business' of:
 - Taxable Person;
 - Transporter;
 - Owner or operator of a warehouse / godown;
 - Any other place

Power of Inspection: [Section 68 of CGST Act]

Inspection of 'goods in movement':

- Person in charge of conveyance carrying goods may be required to carry specified documents/devices
- Verification of documents/device by proper officer;
- E-way bill?

Search & Seizure of goods/documents: [Section 67 of CGST Act]

- Where the proper officer has 'reason to believe':
 - That goods are liable for confiscation; or
 - Any documents or books or things are useful/relevant to any proceedings
- An order for non-removal or parting with goods may be given to the owner
- Documents/books may be retained 'only' for so long as may be necessary for examination and for inquiry/proceedings
- Revenue officers may purchase goods/services from the business premises of a taxable person to check proper issuance of invoices. On return of such goods, the taxable person shall cancelation the invoice and refund the amount paid [Section 67(12)]

Seizure: Issues

- Can laptops/ desktops be seized?
- Are individual employees obliged to give their passwords which will enable the investigating officers to access emails or network or servers located outside India of the company?
- Can emails recovered from computers be relied upon by the department?
- Is assessee entitled to take copies or backups of the seized computers?
- Return of non-RUDs

Power to Summon Persons: [Section 70 of CGST Act]

Summon Persons:

- Proper Officer can summon any person
- Attendance is considered necessary in any enquiry under the Act for:
 - Giving evidence
 - Produce document or thing in possession or under control of person
 - May be specific document or thing or
 - All documents or things of certain description

'Reason to believe' – unfettered powers?

Does not mean subjective satisfaction of officer concerned. It is not arbitrary power given to an officer.

Tata Chemicals Ltd. - 2015 (320) E.L.T. 45 (S.C.)

Such reasons can be recorded on file and Court can scrutinize them.

Agarwal Iron Industries - 2014 (310) E.L.T. 226 (S.C.)

Propriety of belief or sufficiency of material is irrelevant for court if some material existed on which belief could be formed.

Gopaldas Udhavdas Ahuja - 2004 (176) E.L.T. 3 (S.C.)

Power to Arrest: [Section 69 of CGST Act]

- When a person can be arrested:
 - Where Commissioner has 'reason to believe' that any person has committed any of the following offence punishable under section 132(1)(d):
 - A taxable person supplies any goods/services without any invoice or issues a false invoice
 - He issues any invoice or bill without supply of goods/services in violation of the provisions of GST
 - He collects any GST but does not pay it to the government within 3 months
 - Even if he collects any GST in contravention of provisions, he still has to deposit it to the government within 3 months. Failure to do so will be an offense under GST
 - He has already been convicted of an earlier u/s 132 i.e., this is his 2nd offense
- Pecuniary Threshold (Section 132)

Power to Arrest: Before Adjudication?

- Presumption of guilt
- Power to be used with circumspection and not casually
- Person sought to be arrested has to be given opportunity to explain materials and circumstances gathered against him
- Adjudication to precede prosecution
- Habitual evader of tax
- Tool for getting 'voluntary deposit' during investigation

- *Makemytrip (India) Pvt. Ltd. – Delhi High Court 2016 (44) S.T.R. 481 (Del.)*

Offences & Penalties

- Twenty-one offences covered for imposition of penalty – Section 122 & Section 132
- Penalties:
 - For any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax – Rs. 10,000/- or 10% of tax due, whichever is higher;
 - For reason of fraud or any wilful misstatement or suppression of facts to evade tax – Rs. 10,000/- or the tax due from such person, whichever is higher
- Penalties for other offences like abetment, dealing with tainted goods in any manner, fails to appear on issuance of summons, fails to issue invoice – Rs 25,000/-

General disciplines related to penalty: For Officers – Section 126

Minor Breaches – No penalties:

- Where tax amount is less than 5,000/-
- If the mistake committed by the person is easily rectifiable

Audit Alterm Partem - No penalty without opportunity of being heard

Speaking Order - Order imposing penalty must specify the nature of breach and applicable law

Voluntary Disclosure - Mitigating factor – Discretion and subjectivity?

Eyewash - Section applies only when penalty is not fixed as a sum or percentage

Prosecution - Section 132

- Offences specified
- Certain offences made cognizable and non-bailable – 50 lacs:
 - Supply goods or services in violation of provisions of Act with intent to evade tax
 - Issue invoice or bill without supply of goods or services leading of wrongful availment/utilization of credit
 - Avail input tax credit using invoice referred in (b) above
 - 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

| Tax amount involved | 100-200 lakhs | 200-500 lakhs | Above 500 lakhs |
|----------------------------|----------------------|----------------------|------------------------|
| Jail term | Upto 1 year | Upto 3 years | Upto 5 year |
| Fine | In all three cases | | |

Other Provisions

- Prosecution - Presumption of culpable mental state – Section 135
 - Rebuttable presumption against the person accused;
 - Standard of proof to rebut presumption – Beyond reasonable doubt
- Offences by companies – Section 137
 - Person in-charge/responsible at the time of commission
- Compounding of offences – Section 138
 - Before or after institution of prosecution on payment of compounding amount
 - Allowed only after payment of tax, interest and penalty
 - Not allowed in all cases

Thank You