AMRG & ASSOCIATES
CHARTERED ACCOUNTANTS

UNDERSTANDING SEARCH AND SEIZURE

- Clarity For Professionals

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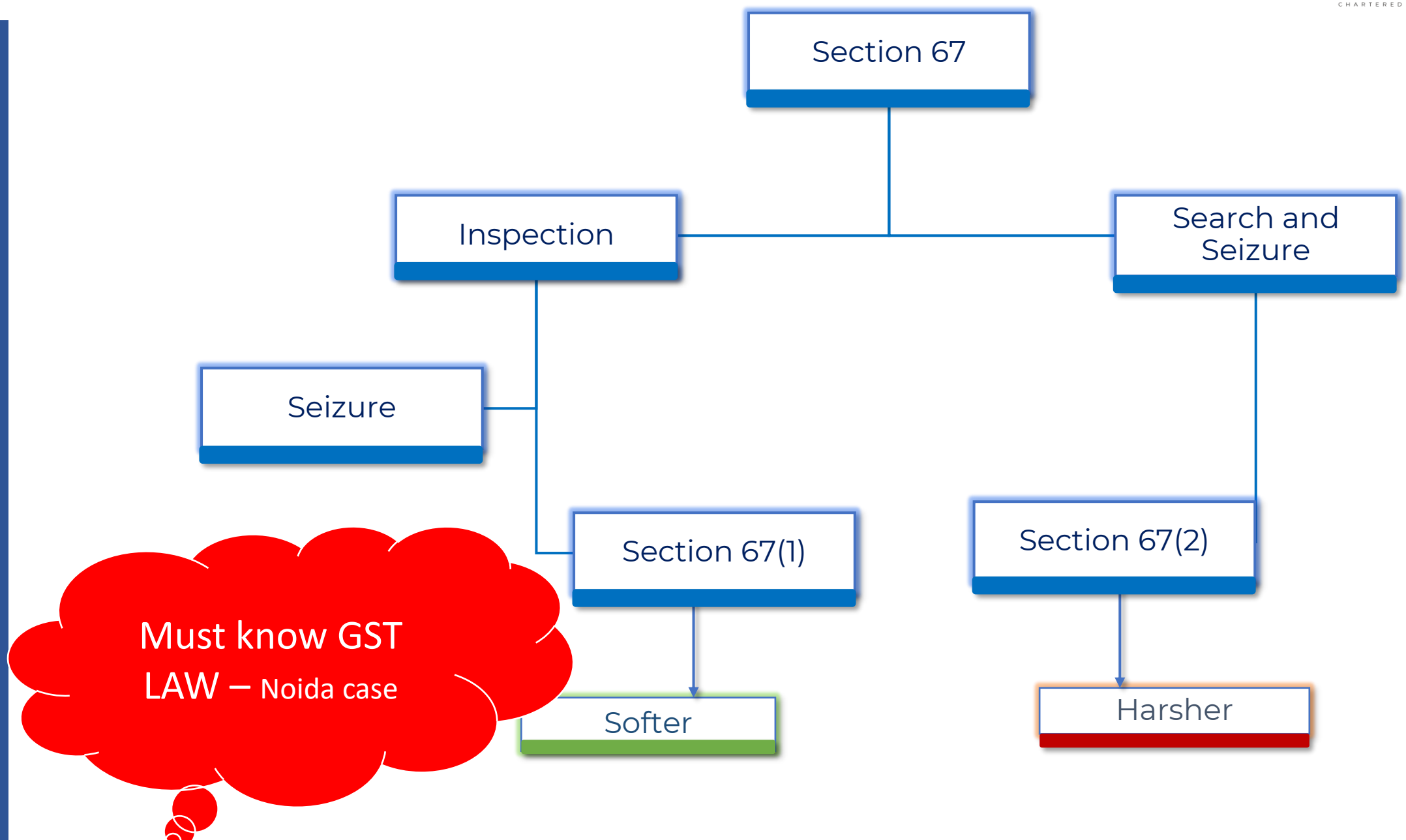
Table Of Content

Introduction



INSPECTION

Section – 67(1): Inspection

67. (1) 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.

GST Administration

CGST 2017

- Principal Chief Commissioners and Principal Directors General
- Chief Commissioners and Directors General
- Principal Commissioners and Principal Additional Directors General
- Commissioners and Additional Directors General
- Additional Commissioners and Additional Directors
- Joint Commissioners and Joint Directors
- Deputy Commissioners and Deputy Directors
- Assistant Commissioners and Assistant Directors

Notification No. 2/2017-Central Tax, Dated 19-6-2017

- Commissioners of Central Tax (Audit)
- Commissioners of Central Tax (Appeals)
- Additional Commissioners of Central Tax (Appeals)
- Joint Commissioner of Central Tax (Appeals)

*SGST 2017

- Chief Commissioner of State Tax
- Commissioners of State Tax
- Additional Commissioners of State Tax
- Joint Commissioners of State Tax
- Deputy Commissioners of State Tax
- Assistant Commissioners of State Tax
- Deputy Assistant Commissioners of State Tax
- Goods and Services Tax officers

* Designation may vary from one State to Another

Basic provisions

Any of the following by a taxable person to evade tax

- Suppression of transaction relating to supply
- Suppression of Stock-in -hand
- Excess Claim of Input Tax Credit
- Contravention of the provisions of the Act(to evade tax)

OR

Where transporter, warehouse operator or any other person

Has **kept goods** which have escaped payment of tax at any place including place of business or is likely to cause tax evasion under this Act.

Inspection meaning

- Inspection gives the **power to inspect the books, documents or any place of business** of taxable person on certain beliefs, which compared to search is a **softer provision and does not allow seizure or confiscation.**

- **In case of Suresh Kumar P.P. vs The Deputy Director [2020] 120 taxmann.com 173 (Kerala),** Here the challenge is to simultaneous proceedings of investigation having been commenced when already an audit was in progress. Audit under section 65 is a routine procedure to be carried out by the Commissioner in such frequency and in such manner as prescribed in the rules; which is independent of an investigation under Section 67. **SC said we do not find any infirmity in the audit and investigation (under section 67) proceeding being continued simultaneously.**

Place of Business

MEANING

Section 2(85) states “place of business” includes-

(a) 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;

(b) a place where a taxable person maintains his books of account

(c) a place where a taxable person is engaged in business through an agent, by whatever name called.

REASONS TO BELIEVE

Definition And Usage

- As per FAQs 3rd edition, dated 15th December, 2018 issued by CBIC, "**reason to believe" is to have knowledge of facts which, although not amounting to direct knowledge**, would **cause a reasonable person**, knowing the same facts, **to reasonably conclude the same thing.**

- As per Section 26 of the IPC, 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' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.

- It is **not mandatory** that such 'reasons to believe' has to be **recorded in writing** by the proper officer, before issuing authorization for Inspection or Search and Seizure, however in the interest of justice **it is advisable.**

- Although the officer is not required to state the reasons for such belief before issuing an authorization for search, he has to disclose the material on which his belief was formed [as per FAQs issued by CBIC].

- 'Reason to believe' need not be recorded invariably in each case. However, it would be better if the materials / information etc. are recorded before issue of search warrant or before conducting search.

- In case of Kwality Dyes & Chemicals vs Collector of Central Excise 1986 (24) ELT 238 **Madras High Court** stated that belief **reason to believe** for supporting the search and seizure proceedings **must be formed by the proper officer who is authorized** in this behalf **and not by a subordinate of the proper officer.**

- **Delhi High Court** in case of Daga Commercial Corpn (P.) Ltd vs Union of India 1983 (14) ELT 2142 held that the **formation of reasonable belief after the search and seizure conducted by the officer, is not a reasonable belief**. Reason of belief is a pre-requisite to search and seizure proceedings.

Relevant Judgements

Allahabad High Court in Rimjhim Ispat Limited Vs. State of UP **-** *"it is essential that the officer authorizing the search should have **'reasons to believe**' based on reasonable material and **should not be fanciful or arbitrary**". "It is also established that this **Court** in exercise of its powers under Article 226 **cannot go into the sufficiency of the reasons** and should not sit as an appellate court over the reasons recorded. It is also well established that the **reasons may or may not be communicated to the assessee but the same should exist on record".***

Judgment of Crompton Greaves Ltd Vs. State of Gujarat 120 STC 510 where in the Court observed that "these words suggest that belief must be that of a honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence **not on mere suspicion, gossip or rumor."**

Judgment of the **Andhra Pradesh High Court** in case of Rai Bahdur Seth Sreeram vs Dy. Collector of Customs AIR 1965 AP 294 held that it is **not possible to lay down precisely** or exhaustively as to **what constitutes reason to believe**. It would depend on various circumstances.

In case of Innovation, Secunderabad vs CBEC 1984 (15) ELT 91 (AP) it was held that officer must first be in possession of information or material to form the required belief reasonably and then alone they can proceed to search or seize as the case may be.

As held in Sheo Nath Singh vs Appellate Assistant 1971 AIR 2451, 1972 SCR (1) 175 by **Supreme Court that Court can examine the material to find out whether an honest or reasonable person can base his reasonable belief upon such materials. If challenged the Proper Officer must disclose material upon which belief is formed.**

Hon'ble **Supreme Court** in ITO Vs. Lakhmani Mewal Das 1976 AIR 1753, 1976 SCR (3) 956, [1975] 99 ITR 296 (Calcutta)[13-01-1972] observed that the phrase postulate belief and existence of reasons for that **belief which must be held in good faith and cannot be merely pretense**. Reason to belief cannot be based on interpretational issue

Principle to determine “reason to believe” - Summary

Key Pointers

1. The **authority must be in *possession of information*** to form an opinion that there is reason to believe.

2. The **authorized person must form an *opinion*** whether there is reason to believe or not.

3. The opinion must be ***based on the material*** which is available and not on irrelevant material.

4. The court would examine a ***rational connection*** between the **material before it and the opinion formed.**

5. The **court cannot go** into the question of aptness or **sufficiency of the grounds** upon which the subjective satisfaction is based.

Can inspection proceeding be conducted for failure to file return? - YES

Proposition

- Expression of the term suppression makes it clear that, it includes non filing of return. Hence, **non-filing of return can lead to initiation of proceedings under Section 67(1) of the CGST Act. However, at the same time a thing should be bear in mind that non-filing of return must be for considerable period of time not just for 1 or 2 months**.

- For initiation of proceedings under Section 67(2) for non filing of return for a reasonable time, first invoking provisions of Section 67(1) of the CGST Act is necessary.

SEARCH AND SEIZURE

Difference Between Inspection And Search

Inspection	Search
• Inspection is the act of **examining something closely**. • Inspection is the **softer provision** for search enabling officers to access a place of business of taxable person. • It does **not give power to seize or confiscate**. • Order issued under GST INS-01. • Section 67(1) of the CGST Act which empowers the proper officer to do inspection which is **restricted to business premise only.**	• Search is the act of **finding something that is hidden** or concealed or an evidence of crime. Search is action of a government official for examining a place, object or a person by authority of law. Order of seizure under GST INS-02. • Section 67(1) of the CGST Act which empowers the proper officer to do inspection which is restricted to business premise only, however no such restriction is envisaged for conducting search and seizure proceedings. • Application of the provisions of **Code of Criminal Procedure** arises only when the premise is searched and not inspected.

Inspection is not Search!!!

Search And Seizure (Section 67)

67 (2) 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 authorize 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:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Rule 139(4) of CGST Rules - Where it is not practicable to seize any such goods, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in FORM GST INS-03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

Provided further that the **documents or books or things** so seized shall be **retained by such officer** only for so long **as may be necessary** for their **examination** and for any **inquiry or proceedings** under this Act.

Rule 139(2) of the CGST Rules - Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorised officer shall make an order of seizure in FORM GST INS-02.

Search And Seizure (Section 67)

(3) The **documents, books** or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, **which have not been relied upon for the issue of notice** under this Act or the rules made thereunder, shall be **returned** to such person **within a period not exceeding thirty days** of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or **break open the door** of any premises **or to break open any almirah**, electronic devices, box, receptacle **in which any goods, accounts**, registers or documents of the person **are suspected to be concealed**, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The **goods so seized** under sub-section (2) **shall be released, on a provisional basis**, upon **execution of a bond** and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

Search And Seizure (Section 67)

(7) Where any goods are seized under sub-section (2) 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:
Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the **perishable or hazardous nature** of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by **notification, specify the goods** or class of goods which shall, as soon as may be **after its seizure** under sub-section (2), be **disposed of by the proper officer** in such manner as may be prescribed.

Rule 141 of the CGST Rules - Where the **goods** or things **seized are of perishable or hazardous nature**, and if the **taxable person pays an amount equivalent to the market price of such goods or** things or the **amount of tax**, **interest and penalty** that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be **released** forthwith, **by an order in FORM GST INS-05,** on proof of payment.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

Search And Seizure (Section 67)

(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorized by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

Section 2(107) “taxable person” means a person who is registered or liable to be registered under section 22 or section 24.

If a person is not registered but is liable to be registered under CGST Act,2017 **then also search can be conducted** over such person.

Section 2(91) “proper officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.

Meaning Of The Word “Secreted”

Relevant Judgements

Supreme Court in case of **Gian Chand vs State of Punjab(1961)** had the occasion to consider meaning of word secreted of Section 105 of the Customs Act, following was observed and held It cannot be said that the **documents have not been secreted** within the meaning of Sec 105 of Customs Act **unless they are hidden**. In context of the section documents which are **kept not in the normal or usual place with a view to conceal them** 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 law cannot find it.

Search Warrant - CBIC FAQS on GST

Explanation

The written authority to conduct search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search.

Contents of a Search Warrant :

- the violation under the Act,
- the premises to be searched,
- the name & designation of the person authorized for search,
- the name of the issuing officer with full designation,
- date and place of issue,
- serial number of the search warrant,
- Period of validity i.e. a day or two days etc.

Basic Requirements Observed During Search Operations - As Per FAQs of CBIC

Requisites while conducting Search

- As per FAQs issued by CBIC, Section 67(10) of CGST/SGST Act prescribes that searches must be carried out in accordance with the provisions of Code of Criminal Procedure, 1973.

- No search of premises should be carried out without a **valid search warrant** issued by the proper officer.

- There should invariably be a **lady officer accompanying** the search team to **residence**.

- The officer or other person about to make it shall **call upon two or more independent** and **respectable inhabitants of the locality to witness the search.** But **no person witnessing** a search under this section shall be **required to attend the Court** as a witness of the search **unless specially summoned by it.**

- The **officers** before starting the search should **disclose their identity** by showing their identity cards to the person in-charge of the premises.

- The **search warrant should be executed before the start of the search** by showing the same to the person in-charge of the premises and his **signature** should be taken on the body of the search warrant in token of having seen the same. The signatures of at least **two witnesses** should also be taken on the body of the search warrant.

Basic Requirements Observed During Search Operations - As Per FAQs of CBIC

Requisites while conducting Search

- **Before the start** of the search proceedings, the team of **officers** conducting the search and the **accompanying witnesses** should offer themselves for their **personal search** to the person in-charge of the premises being searched. **Similarly, after the completion** of search all the officers and the witnesses should again offer themselves for their personal search.

- A **Panchnama**/Mahazar of the proceedings of the search should necessarily be **prepared on the spot**. A list of all goods, documents recovered and seized/detained should be prepared and annexed to the Panchnama/Mahazar. The Panchnama/Mahazar and the list of goods/documents seized/detained should invariably be **signed by the witnesses**, the in-charge/ **owner** of the premises before whom the search is conducted and **also by the officer(s)** duly authorized for conducting the search.

- After the search is over, the search warrant duly executed should be returned in original to the issuing officer with a report regarding the outcome of the search. The names of the officers who participated in the search may also be written on the reverse of the search warrant.

- The issuing authority of search warrant should maintain register of records of search warrant issued and returned and used search warrants should be kept in records.

- **A copy of the Panchnama/** Mahazar along with its annexure should be **given** to the person in-charge/ **owner of the premises** being searched under acknowledgement.

Charter of rights and duties

Circular

The CBDT vide its Circular dated March 07, 2017, issued a **Charter of rights and duties of the persons who are searched** and the same has been reproduced herein below:

The rights of the persons who are subjected to a search are given below:

I. To see the warrant of authorization duly signed and sealed by the issuing authority.
II. To verify the identity of each member of the search party.
III. To insist on personal search of ladies being taken only by a lady, with strict regard to decency.
IV. To have at least two respectable and independent residents of the locality as witnesses.
V. A lady occupying an apartment being searched has a right to withdraw before the search party enters, if, according to custom, she does not appear in public.
VI. To call a medical practitioner in case of emergency.
VII. To allow the children to go to school, after checking their bags.
VIII. To have the facility of having meals, etc., at the normal time.
IX. To inspect the seals placed on various receptacles, sealed in course of search and subsequently at the time of reopening of the seals.
X. Every person who is examined under sec 132(4) has a right to ensure that the facts so stated by him have been recorded correctly.
XI. To have a copy of the panchanama together with all the annexures.
XII. To have a copy of any statement that is used against him by the Department.
XIII. To have inspection of the seized books of account, etc., or to take extracts therefrom in the presence of any of the authorised officers or any other person empowered by him.
XIV. To make an application objecting to the approval given by the Commissioner of Income-tax for retention of books and documents beyond 180 days from the date of the seizure.

Charter of rights and duties

Circular

XV. To answer all queries truthfully and to the best of his knowledge. He should not allow any third party to either interfere or prompt while his statement is being recorded by the Authorized Officer. In doing so, he should also keep in mind that:
(a) If he refuses to answer a question on a subject relevant to the search operation, he shall be punishable with imprisonment or fine or both, w/s 179 of the Indian Penal Code.
(b) Being legally bound by an oath or affirmation to state the truth, if he makes a false statement, he shall be punishable with imprisonment or fine or both u/s 181 of the Indian Penal Code.
(c) Similarly, if he provides evidence which is false and which he knows or believes to be false, he is liable to be punished u/s 191 of the Indian Penal Code.

XVI. To affix his signature on the recorded statement, inventories and the panchnama.

XVII. To ensure that peace is maintained throughout the duration of the search, and to to operate with the search party in all respects so that the search action is concluded at the earliest and in a peaceful manner.

XVIII. Similar co-operation should be extended even after the search action is over, so as to enable the Authorized Officer to complete necessary follow-up investigations at the earliest.

Important Rulings

- Paresh Nathalal Chauhan vs State of Gujarat Special Civil Application No. 18463 of 2019: Sub-section (2) of **section 67 does not empower** the officer concerned to **record statements of family members through force** or coercion **or to record their conversations in their mobile phones**. In exercise of powers under sub-section (2) of section 67, it is not permissible for the authorized officer to use coercive measures against family members to find out the whereabouts of the taxable person.

- **The search and seizure proceedings must be justified by formation of the requisite belief at the time when the decision was taken to conduct the search**. **Subsequent discovery** of the **relevant material will not validate a search** which was initially invalid. Related Case Bishnu Kumar Shrestha vs Union of India 1987 (11) ECC 385, 1987 (27) ELT 369 Cal.

Seizure Of Books or documents

Definition

- **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.

Background

- Often cash is received for the goods sold or services rendered by a business. It is understandably the most common, convenient and widely accepted mode of exchange. The presence of cash in any business establishment is natural.

- Many a time, cash found available in the business premises is seized and taken away by the department without examining the factual veracity of the statement obtained as to whether the same is detainable or not.

Seizure Of Cash

- Legal Provisions

"(2) 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****"*

- For the purpose of seizure of books or documents or things there must be satisfaction of **twin condition**:

  (a) such books or documents or things are useful/ **relevant for proceedings** under the GST Act and

  (b) there is presumption/reason to believe that such books or documents or things are **secreted at any place.**

Cash can be seized

Kanishka Matta (MPHC)

[2020] 120 taxmann.com 174 (Madhya Pradesh): It was upheld that the **word 'things' appearing in Section 67(2) is to be given wide meaning to include even money. Cash is covered under thing in "Document, Book or Things" and can be seized until the investigation is carried out and adjudicated.**

*"20. The **Hon'ble Supreme Court** in the case of D. Vinod Shivappa v. Nanda Belliappa [2006] 6 SCC 456 in paragraph No. 12 as held as under:—*

> *"12. It is well settled that in interpreting a statute the **court must adopt that construction which suppresses the mischief and advances the remedy**. This is a rule laid down in Heydon's case [(1584) 76 ER 637 : 3 Co Rep 7a] also known as the rule of purposive construction or **mischief rule**."*

*Therefore, keeping in view the aforesaid interpretation of the word **"thing" money has to be included and it cannot be excluded** as prayed by the petitioner **from Section 67(2).** The present case is at the stage of search and seizure. A search has been carried out and proceedings are going on."*

Cash cannot be seized

Deepak Khandelwal (DHC)

*54. **Section 67 of the Act is not a machinery provision for recovery of tax**; it is **for ensuring compliance** and to aid proceedings against evasion of tax. Section 79 of the Act provides for the machinery for recovery of tax. Section 83 of the Act provides for provisional attachment of any property belonging to a taxable person to safeguard the interests of the Revenue. **Section 67 of the Act must be read schematically along with other provisions of the Act**.*

*55. The search and seizure operations under **section 67** of the Act are **not for the purpose of seizing unaccounted income** or assets or ensuring that the same are taxed. The **said field is covered by the Income-tax Act, 1961.***

Distinguishing Madhya Pradesh HC Ruling

*57. Mr. Harpreet Singh has placed reliance on the decision of the **Madhya Pradesh High Court in Smt. Kanishka Matta** .....With much respect to the Hon'ble Court and its opinion, **we are unable to persuade ourselves to adopt the said view**. As noted above, the power of **search and seizure are drastic powers and are not required to be construed liberally.** Further, we find that the legislative intent of permitting seizure of books or documents or things in terms of sub-section (2) of section 67 of the Act is crystal clear and **it does not permit seizure of currency or valuable assets**, simply, on the ground that the same represent unaccounted wealth. The mischief rule or the Heydon's rule (propounded in the year 1584 in Heydon's case: 76 ER 637) requires a statute to be interpreted in the light of its purpose. **The purpose of the Act is not to proceed against unaccounted wealth**. The provision of section 67 of the Act is also **not to seize assets for recovering tax**. Thus, applying the principle of purposive interpretation, the power under section 67 of the Act cannot be read to extend to enable seizure of assets on the ground that the same are not accounted for.*

[2023] 153 taxmann.com 443 (Delhi): It was held that **during search, proper officer cannot seize currency and other valuable assets** in exercise of powers under Section 67(2); even if so done, same are required to be returned by virtue of Section 67(3).

Seizure Of Cash

AMRG Comments

Gunjan Bindal [SLP (CIVIL) Diary No(s). 44061 Of 2024]: In light of **conflicting judgments rendered by the Delhi High Court and the Madhya Pradesh High Court, an SLP was filed** before the Hon'ble Supreme Court.

- **Only those things can be seized which are relevant to any proceedings.**
- **Seizure of cash may amount to collection of tax without assessment** which again is in **contravention to Article 265** of the Constitution of India which provides no tax can be recovered without authority of law.
- Section 78 & Section 79 of CGST Act empowers the GST Authorities to initiate **recovery proceedings only post the completion of assessment.**
- Neither can authorities force to deposit tax or post-dated cheque as held by Gujarat High Court in case of M/s Remark Flour Mills Private Limited C/SCA/4835/2018, it slammed the practice of collecting post dated cheque during the raid is not permissible means of collection of revenue.

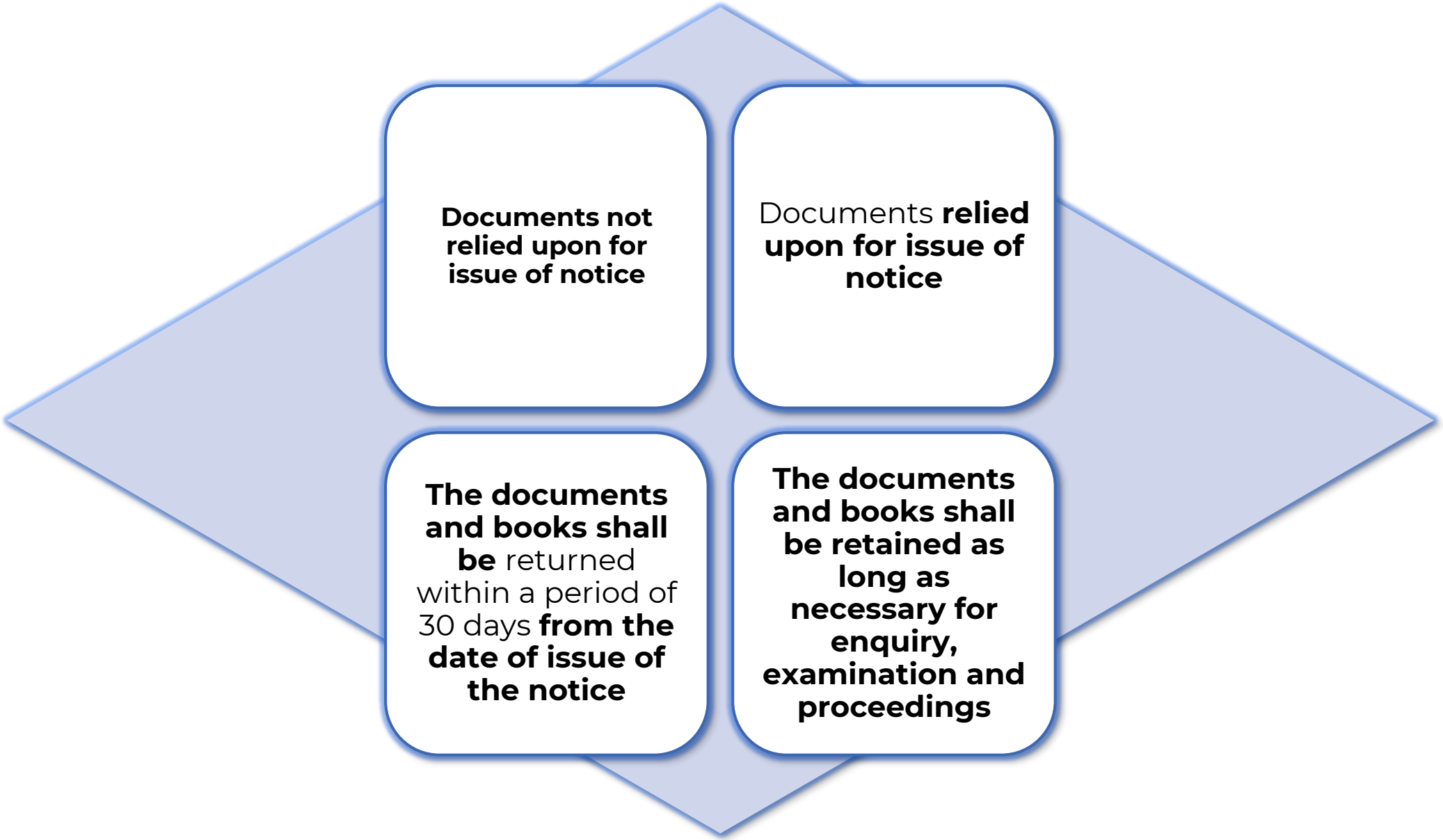
Relevant case laws

- ***Krishna Chaurasia v. Additional Director General, Directorate General of GST Intelligence (HCD)*** [2024] 167 taxmann.com 129 (Delhi)[06-09-2024]: GST : Seizure of cash during GST search operations without explicit legal authority is impermissible and subject to return with interest
- ***Coronation Fireworks Factory v. Joint Director, Directorate General of GST Intelligence (DGGI), Coimbatore (HCM)*** *[2024] 165 taxmann.com 536 (Madras)[01-07-2024]: GST : Seized cash can be appropriated only towards established GST liability and must be refunded if demand is dropped in show cause notice proceedings*
- ***State Tax Officer (IB) v. Shabu George (SC)*** *[2023] 153 taxmann.com 138 (SC): GST : SLP dismissed against High Court's ruling that in an investigation aimed at detecting tax evasion under GST Act, cash cannot be seized, especially when cash does not form part of stock-in- trade of business*
- ***Commissioner of CGST Delhi West v. Gunjan Bindal*** *[2024] 169 taxmann.com 147 (SC): GST : Where citing conflicting interpretations by Delhi and Madhya Pradesh High Courts on whether unexplained cash can be seized, High Court held that cash seized during a section 67 search must be refunded on SLP, notice was directed to be issued*
- ***Bharatkumar Pravinkumar and Co. v. State of Gujarat*** *[2023] 156 taxmann.com 136 (Gujarat): GST : If cash found in search does not form a part of stock-in-trade, it cannot be seized*

Difference Between Seizure And Confiscation

Parameter	Seizure	Confiscation
Meaning	Temporary taking over of goods/documents by the officer for investigation or adjudication.	Permanent appropriation of goods/conveyance by the Government after confirmed GST offence.
Purpose	To prevent tampering, movement or disposal of goods/documents during inquiry.	Penal action for confirmed contravention like tax evasion or transporting goods without documents.
Governing Section	Section 67(2) of CGST Act	Section 130 of CGST Act
Ownership of Goods	Remains with the taxpayer.	Transferred to the Government.
Nature	Temporary action.	Permanent consequence.
Trigger Condition	“Reason to believe” that goods/documents are liable to confiscation or are useful.	Committed offence under Section 130 (e.g., evasion, misdeclaration, improper transport, etc.).
Legal Process	No prior notice required; based on officer’s belief.	Requires issuance of show-cause notice and opportunity of being heard under Section 130(4).
Release of Goods	Can be released on bond/security as per Rule 140 of CGST Rules.	Can be released on payment of fine in lieu of confiscation, along with tax and penalty.

Release of Books And Documents Seized



But books seized under Section 67(11) need not to be released within 30 days of issue of notice.

Proper Officer Dispose Of These Specified Goods

Notification No 27/2018-Central Tax dated June 13, 2018 has specified 17 categories:
Categories of goods which shall, as soon as may be after its seizure be disposed of by the proper officer, having regard to the perishable or hazardous nature

Salt and hygroscopic substances	**Bulk drugs and chemicals** falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
Raw (wet and salted) hides and skins	Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
Newspapers and periodicals	Fireworks
Menthol, Camphor, Saffron	Red Sander
Re-fills for ball-point pens	**Sandalwood**
Lighter fuel, including lighters with gas, not having arrangement for refilling	All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
Cells, batteries and rechargeable batteries	All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new model etc.
Petroleum Products	Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under sub-section (6) of section 67 of the said Act, but provisional release has not been taken by the concerned person within a period of one month from the date of execution of the bond for provisional release.
Dangerous drugs and psychotropic substances	

Right Of The Taxpayer

To obtain **panchanama** once the search & seizure is done

Seizure order of all items seized in INS-03

Right to **make copies** of the documents or take extracts

Right to receive **show cause notice u/s 73 once search is concluded**

Right to **receive back the seized goods** if no notice given within 6 months of seizure

Right to receive back seized documents within 30 days that are not relied in the notice

My experience

AMRG & ASSOCIATES
CHARTERED ACCOUNTANTS

Must retract statements

- In reasonable period – **2 days.**
- **Chirag case** – Case picked up twice by different officers, same jurisdiction.
- Soap case- Amount Paid on the pretext that no further investigation. Demand admitted of 10 crores. Later SCN issued for 100 crores.

Must know Law

- Noida case – Transaction value
- Bio – patch- Will talk only to owner and he shall be present at all times in front of the tax officer
- Bio-patch – We signed blank papers
- Raipur case – Officers told them that reversal of ITC is not done, wrong % charged on. He were fighting on the taxability of few products. Search went for 3 days.

What next?

- Please issue notice.
- I don't agree to what you say.
- Not much need to plead.

FAQ ON SEARCH AND SEIZURE

Can Search Continue Throughout The Night?

Background

- There is **no time prescribed for initiating or concluding a search action** Therefore, **a search may begin at any hour of the day, and it can go on for hours or days** if the search party deems fit.
- However, such an elongated search may cause a lot of duress and harassment to the taxpayer since it usually entails restricting the movement of the persons present on the premises and questioning all or any of them for long hours.

References

- The **Hon'ble Patna High Court** in *Chief Commissioner of Income Tax (CA) v The State of Bihar [2012] 205 TAXMAN 232 (Patna)* through The Chief Secretary, took the view that **the human rights of an individual are paramount and cannot be taken lightly.** It was observed as under:

- That if required, the **search and seizure can continue for days but at the same time due regard to human dignity and value cannot be ignored. In the instant case, no reason has been assigned as to why it was absolutely imperative to continue with the interrogations at odd hours of second night till 3 A.M**.

- The department in the instant case has issued a standard operating procedure for carrying out search.

Can Search Continue Throughout The Night?

References

As far as possible search of premises, once started should continue till it is concluded. However, **where because of any unavoidable and compelling reason, it is not possible to do so** and it is considered necessary, in consultation with the Control Room, to temporarily conclude the search for the day and continue the same on a subsequent day, **the authorized Officer should take the following steps:**

1. **The premises should be properly sealed in the presence of atleast two witnesses and placed under armed police guards along with some responsible persons of the Tax Department.** In a case where only a part of the premises could not be searched, the decision whether to seal the entire premises or only that portion which is yet to be searched should be taken after a careful consideration of all the relevant factors, if possible in consultation with the Control Room. As far as possible only that portion of the premises should be sealed, which is yet to be searched so that minimum inconvenience is caused to its occupants.

2. **A panchnama should be prepared even if the search is temporarily concluded.** This should clearly indicate that the search was temporarily concluded and not finally concluded. If search has been concluded in respect of a part of the premises, this fact should also be clearly recorded in the panchnama.

Can Search Continue Throughout The Night?

References

3. It is not necessary that seizure of books of account, documents, bullion, other valuable articles or things, etc. should be made only on conclusion of the search. **Seizure can also be made even if the search has been suspended and is to continue on a subsequent day.** Where search of a part of the premises has been concluded, inventories of the books of account, documents, bullion, jewellery, other valuable articles or things, etc. found as a result of the search and seizures made should be prepared in the usual manner.

4. On the subsequent day when the search is to be resumed, the seals should be opened in the presence of witnesses. As far as possible the same persons who witnessed the search on the day it was suspended should be called upon to witness its continuation. However, if they are not available, the authorised officer should select two or more other respectable inhabitants of the locality in which the building or place to be searched is situate to attend and witness the search. The Authorised Officer should issue an order in writing to the persons selected to attend and witness continuation of the search, even if they are the same persons who witnessed the search on the day it was suspended.

5. Where on continuation of the search earlier suspended, **any seal is found to be broken or tampered with, the matter should be immediately reported to the Control Room.** A complaint to the police should also be lodged immediately. Contravention of an order under sec 132(3) also entails prosecution under sec 275 A.

6. The search may resume after the aforesaid actions have been taken.

Can Search Continue Throughout The Night?

Foreign Courts

- The aspect of depriving individuals of basic human body needs such as sleep and nutrition has also been highlighted in the following judgments from foreign courts

- In Ireland v United Kingdom' [1978] ECHR 1**,** it was held that **sleep deprivation as part of methods of interrogation amounted to inhuman treatment** and violation of Article 3 of the European Convention on Human Rights.

- In Salmouni v Francet [2000], 29 EHRR 403 the court went to the extent of stating that Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment and went on to the extent of stating that no exception to Article 3 can be made even in the event of public emergency threatening the life of the nation. Human rights belong to all of us equally and would apply no less to an intruder of law, as to a law enforcing agency.

Can The Statement Of Family Members Also Be Recorded?

Background

- The authorized officer may under section 132(4) of Income Tax Act, 1961, **during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money**, bullion, jewellery or other valuable articles or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding.

- Pursuant to **Section 70** of the CGST Act, 2017, Proper Officer(s) under the law have the 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.

- Gujarat HC in **Paresh Nathalal Chauhan** Vs. State of Gujarat_held that **section 67(2**) and (4) gives power to search, seal or break to recover goods, documents or accounts that are suspected to be concealed**.** The section **does not empower the officer to stay at Assessee's premises for 8 days where there are family members staying and record their statement through force and coercion** to find out whereabouts of taxable person. Held the entire search was without authority of law and total abuse of power vested under law. It is not permissible for the authorised officer to use coercive measures against family members to find out the whereabouts of the taxable person.

Can I Retract My Statement?

Background

- A statement taken on oath under sec 132(4) of IT Act, 1961 may be retracted depending on the facts and circumstances of the case. When a person intends to retract his/her statement, the same **should be done without undue delay, citing cogent reasons for doing so, along with other evidences to corroborate the reasons given for retraction.** However, it is common knowledge that a retraction of statements is viewed adversely in most cases.

References

- *In Pullangode Rubber Produce Co. Ltd. v State of Kerala and Ors.' [1973] 91 ITR 18 (SC)* the Hon'ble Supreme court held that - **"An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect."**

- **Points which are relevant when a statement is retracted**

  In Video Master v Joint Commissioner of Income Tax', [2002] 83 ITD 102 (Mum), the taxpayer retracted from his statement claiming it has been made under duress and coercion. In this case, the Appellate Tribunal discussed certain essential factors which have to be ascertained, to gauge the admissibility of a retracted statement. The tribunal observed that:
  To prove that whether the retraction made was valid or not, one has to consider the following factors:

  (i) The **time gap between the date of recording the statement** under Section 132(4) of the Act **and the date of filing the affidavit** retracting the above statement.
  (ii) The **evidence of the witnesses** who were present during the course of search.
  (iii) **Communication made with the higher authorities** and the documents seized during the course of search.

Can I Retract My Statement?

References

Modes & Manner of Retraction

Retraction of a statement later on, which was made during the search operation, is not an easy way to escape the tax implications and requires corroborative evidence and documents to support the retraction and show the circumstances as to why the person is retracting his statement made earlier. The person has to go through minute scrutiny by the tax authorities and the courts later on at different stages if the need be. The following aspects should be kept in mind:

i. **Affidavit** A retraction should be made on an affidavit along with supporting evidence, if any,
ii. **Affidavit of witnesses** Additional affidavit of the witnesses present during search or seizure may also be filed. The statement of the witnesses present holds good value and may aid the taxpayer in getting relief.
iii. **Elaborate** It must lay down the facts of the case and detail the evidence showing inter alia use of force, coercion, intimidation, or any mistake of fact/law, whatever may be the case.
iv. **Highlight Error** In case of a mistake of fact or law, it must spell out as to what statement was recorded, what mistake took place in making such a statement, the reason for the same, and the actual correct position. Evidence in support of accurate facts must also be attached.
v. **Inform Senior Officers** In addition to the above, a retraction which is made on affidavit should also be communicated to higher authorities.
vi. **Earlier, the better** It is reiterated that any retraction should be done at the earliest without any delay. A retraction made immediately may strengthen the case of the taxpayer, whereas a belated denial will, in most cases, have no value and would be seen as an afterthought.

Instances When Searches Held Invalid

Background

- The searches were generally held to be invalid, if they had been authorized **on the basis of invalid or vague, or general or not so reliable or imaginary information,** the reliability of which was not fully and properly enquired and verified or because the authorized officer did not apply his independent mind to the facts and the circumstances of the case, but merely and mechanically acted on the report of subordinate officers. In some cases, it was also found that the information on the basis of which the authorization was issued was either incorrect or was found to be at variance with the past records of the taxpayer. Cases of inquisitional searches were held to be bad. In some other cases, the search was held to be invalid as the authorized officers did not seize the assets on their own but acted on the instructions of the superiors.

Some Instances

- In N.K. Textile Mills v CIT (1966) 62 IT 58 (P&H), though the Inspecting Assistant Commissioner submitted a report, that he had information from a reliable source that the taxpayer is using the basement for manipulation of account books for reducing his income for tax purposes, and that unless action was taken immediately the books were likely to be shifted to some other place, still the High Court held that **there could be no reason for the belief to issue a warrant in absence of the name of the person who made the statement and for the reason that information was only hearsay.**
- In Dwarka Prosad Agarwalla v Director of Inspection (1982) 137 IT 456 (Cal), though **there was a report from an Assistant Director** (ADI) that **there was specific information that the Agarwala and his sons** were carrying on business in chemicals and fertilisers and mineral powders and had **accumulated huge unaccounted money** in the form of cash, jewellery and stock by manipulation of account books, the High Court **did not uphold the authorisation for search as the Officer's report did not mention as to what was the specific information as also the nature and source of inquiry, discreet or otherwise.**

Instances When Searches Held Invalid

References

- In Kusum Lata v CIT (1989) 180 ITR 365 (Raj) on the basis of a bald information. That the taxpayer lady was carrying on business in the name of Latha & C. the authorised stockist of "Baba brand chewing tobacco, and that the **manufacturers of Baba' brand chewing tobacco are selling them at high premium due to artificial scarcity**, the authorisation was issued by the Commissioner for search of the house of the husband where she lived. The Rajasthan High Court held the search **to be illegal and invalid as it found that the belief was not on reasonable or on credible information but on information which may be imaginary.**

- 'In the case of Mahesh Kumar Agarwal y DDIT (2003) 260 IT 67 (Cal), the Calcutta High Court found that the following would not constitute satisfaction of & mandatory requirement viz reason to believe, a most salutary safeguard against the exercise of power by Competent Authority, to invade upon the rights and privacy and freedom of the tax payer.
  a) The petitioner and his brother are carrying on business separately but under one brand name
  b) The entire affairs are controlled by the petitioner along with his brother
  c) Documents, papers, undisclosed cash, jewellery and other assets are likely to be found at his residence
  d) The petitioner has transferred his place of business where assets and evidence regarding undisclosed income are likely to be found.

- The Court held that the above grounds are merely a pretense. It has also held that "reason to suspect" found in sub-section (lA) of section 132 is also subject to the satisfaction of the primary part of "reason to believe", being the foundation for the authorizing officer to order a search. Unless the test of "reason to believe" is satisfied, there is no scope for sub-sections (1A) and (4A) to get attracted**. The reason to believe is a mandatory requirement, which cannot be subsumed by "reason to suspect".** The better view is that, where there is reason to believe for issue of search warrant, the choice of places of search can be made on mere reason to suspect.

- It also held that "reason to believe" does not mean subjective satisfaction of the authorities, but should have a rational connection or a relevant bearing for formation of the belief not extraneous or irrelevance for the purpose.

Instances When Searches Held Invalid

References

- The Hon'ble High Court of Andhra Pradesh, in the case of K. Munivelu v. The Government of India and Ors.[7] [AIR1972AP318], while dealing with the terms "Reason to Believe" and "suspects", with respect to Section 3 (2) of Essential Commodities Act, 1955, which deals with the power of the authorized officer to enter and search the premises and the seizure thereof, and the Andhra Pradesh Coarse Grains (Export) Control Order, 1965, has held that the term "**Reason to believe"** is **a much stronger expression than the word "suspect"** and further observed from the meanings attributed to the words "suspect" and "reason to believe", that it is evident that the initial stage for believing the existence of a certain thing or an alleged fact is suspicion. **After suspecting the existence of a thing**, condition or a statement of fact, you **collect information and then examine that information and come to a final conclusion on the basis of that information, that such a thing**, condition or statement of a fact exists. All these ingredients are prerequisite for forming any opinion based on "Reason to Believe".


SEIZURE

Seizure

Definition

67(11) Where the **proper officer has reasons to believe** that any **person has evaded or is attempting to evade** the payment of any tax, he may, **for reasons to be recorded in writing**, **seize the accounts**, **registers or documents** of such person **produced before him** and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

- In this case **reasons are to be recorded in writing**, whereas neither in inspection nor in search reasons are to be recorded in writing.

- **This is Seizure without search proceedings**


SUMMONS

Section – 70 Power To Summon

Provision

Section 70. Power to summon persons to give evidence and produce documents.-
(1) 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 (5 of 1908).

(1A) All persons summoned under sub-section (1) shall be bound to attend, ***either in person or by an authorized representative****,* ***as such officer may direct****, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.*

(inserted vide Finance (No. 2) Act, 2024 with effect from 01-11-2024)

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

Section – 70 Power To Summon

Section 2(15). Authorized Representative

"Authorised representative" means the representative as referred to in ***Section 116***

Section 116. Appearance by authorised representative

(2) For the purposes of this Act, the expression "authorised representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being—

(a) his ***relative*** *or* ***regular employee****; or*

(b) an ***advocate*** *who is* ***entitled to practice*** *in any court in India, and who has not been debarred from practicing before any court in India; or*

(c) any ***chartered accountant****, a* ***cost accountant*** *or a* ***company secretary****, who holds a certificate of practice and who has not been debarred from practice; or*

(d) a ***retired officer of the Commercial Tax Department*** *of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:*
Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or
(e) any person who has been authorised to act as a ***goods and services tax practitioner*** *on behalf of the concerned registered person.*

Section – 70 Power To Summon

Memorandum of Finance (No. 2) Bill, 2024

As per the memorandum, vide clause no. 131 of the Finance Bill, 2024, Section 70 was proposed to be amended in order to enable an authorised representative to appear on behalf of the summoned person before the proper officer in compliance of summons issued by the said officer.

Relevant Extracts of 53rd GST Council Meeting Agenda

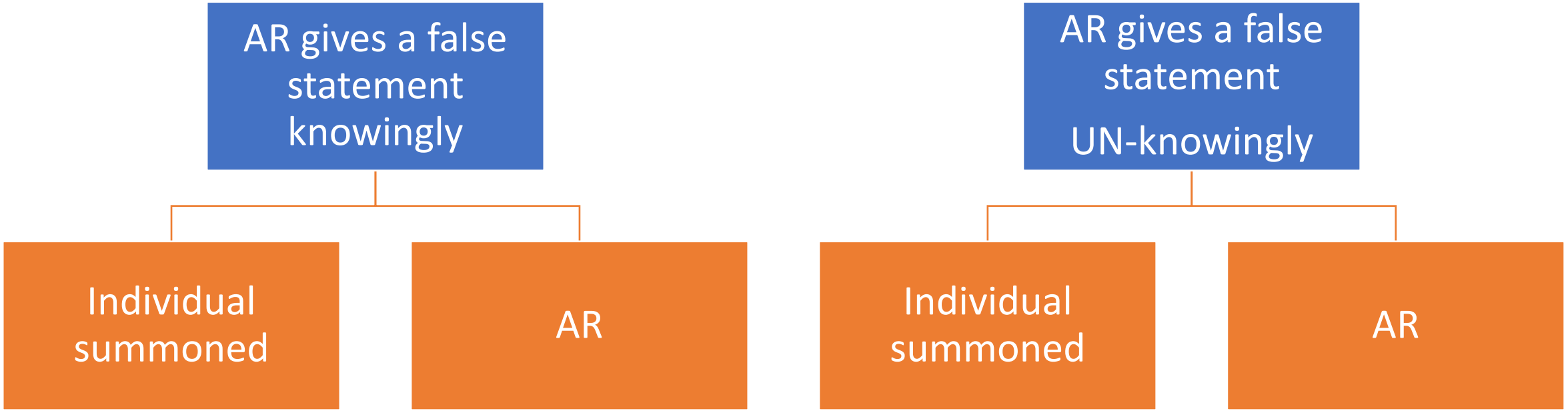
It has been submitted that section 70 of the CGST Act does not mention the words 'authorised representative'. However, ***section 116*** *of the CGST Act dealing with 'Appearance by Authorised Representative'* ***allows appearances by the authorised representative****.* ***On combined reading*** *of section 70 and section 116 of the CGST Act, it* ***appears that the summoned person may appear either in person or through an authorised representative****.*

However, the ***current format of summons*** *issued under section 70 of the CGST Act* ***does not provide the option to appear by an authorised representative.***

The Central Excise Act, 1944 and Customs Act, 1962, *provide in the section itself for an* ***option for the appearance through authorised agent against the summons issued to the person****. Therefore, keeping in consideration the legal opinion offered by MoLD and the existing provisions in Central Excise Act, 1944 and Customs Act, 1962, there may be a need for suitable legislative amendment in section 70 of the CGST Act to provide for appearance on summons by the authorised representative of the summoned person. This will* ***promote ease of doing business*** *especially in matter of production of documents and the like, into the conduct of enquiry by the officer.*

Section – 70 Power To Summon

Practical Problems and Open Issues



Penalty for wrong statement on oath.
Assumptions for the case.

Practical Problems and Open Issues

Who can be held responsible for a wrong statement issued by authorized representative?

- If an authorised representative gives incorrect information, can they face criminal charges?
- Or does responsibility stay with the person who was originally summoned?

Does "no bad intent" protect the representative?

- If the representative honestly didn't know the taxpayer was committing fraud, is that a defence?
- How do it be proved that authorized representative "intended" to mislead?

Can the principal be blamed for the representative's mistake?

- If the statement given by the representative helps build a fraud case, can the taxpayer still be prosecuted?
- Is it fair to use the representative's words against the principal?

Section – 70 Power To Summon

SECTION 193 IPC

Punishment for false evidence: Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation

1. A trial before a Court-martial is a judicial proceeding.
2. An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Illustration A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.
3. An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Illustration A, in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence.

Section – 70 Power To Summon

SECTION 228 IPC

Intentional insult or interruption to public servant sitting in judicial proceeding: Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Guidelines For Issue Of Summons

GST FAQ by CBEC- 2nd Edition. March 31, 2017

Prerequisites for issuing a summon

i. summons are to be issued as a **last resort where assesses are not co-operating** and this section should not be used for the top management;
ii. the **language of the summons should not be harsh** and legal which causes unnecessary mental stress and embarrassment to the receiver;
iii. **summons by Superintendents** should be issued after obtaining **prior written permission** from an officer **not below the rank of Assistant Commissioner** with the reasons for issuance of summons to be recorded in writing;
iv. where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;
v. in all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;
vi. **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.

Precautionary provisions

GST FAQ by CBEC- 2nd Edition. March 31, 2017

The following precautions should generally be observed when summoning a person: -

- (i) A summon should not be issued for appearance where it is not justified. The power to **summon can be exercised only** when **there is an inquiry being undertaken** and the attendance of the person is considered necessary.
- (ii) 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.
- (iii) Respect the time of appearance given in the summons. **No person should be made to wait for long hours** before his statement is recorded except when it has been decided very consciously as a matter of strategy.
- (iv) Preferably, statements **should be recorded during office hours**; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

Important Points

Panchnama - Critical Document

- Panchnama normally contains description of the activities happened during the course of proceedings like date of start of search, name and number of premise/place searched, details of physical record found, details of electronic records founds like computers, laptop, hard-disk, floppy-disk, etc. It is also relevant to mention that, seizure order in Form GST INS-01 (which provides details of items seized like details of documents / files seized, details of inventory seized etc.) should normally part not Panchnama.

- Panchnama should record everything that takes place in the course of search and seizure proceedings. If any document is being seized then it is necessary to record what are the documents recovered from the premises.

- **Ideally a copy of panchnama is given to the taxpayer.**

- **There is a difference between Panchnama and recording of statement at the time under Section 70 of the CGST.** However, in the case of statement buy the **summoned person there is no requirement for giving copy/copies of statement**, but having said that for the purpose of his/her defence, assessee can ask for copies of his statement as well as statement of other persons

Important Points

Refreshing the memories during the judicial proceedings

- It would be advisable that a person giving wrong/fabricated/**incorrect information should take time from authorities for refreshing its memory** and **accordingly give statement in future date** as given by authorities. The departmental authorities cannot force person for giving statement at that particular point of time.

Miscellaneous

- Any **confession made by a person during the summon proceedings can be used against him as an evidence.** Section 70 of CGST Act does not contemplate any magisterial interference.

- Summon can be issued on receipt of complaint by the GST Officer, if any complaint has been received by the GST Officer then in order to pull out the truth of case and form its reason to believe, GST Officer may issue summon to concerned person against whom complaint has been received and accordingly post the information.

- **Mere issuance of summon does not amount to declaration of person as an accused**. Issuance of summons is for inquiry purpose to get various information, documents, details etc. from the concerned person.

- **Summon cannot be issued for interpretational issues, it can only be issued to gather factual information and inquiry.**

Important Changes in provisions to be noted

Old Provisions	New Provision	Notes
Code of Criminal Procedure, 1973	Bhartiya Nagarik Suraksha Sanhita, 2023	These new provisions came into force on 1st July, 2024. (new provisions are not retrospective in nature)
Indian Penal Code, 1860	Bhartiya Nyaya Sanhita, 2023	
Indian Evidence Act, 1872	Bhartiya Sakhshya Adhiniyam, 2023	

ABOUT AMRG

About AMRG

Founded in 1984 and driven strength to strength in past 4 decades.

With a team size of 100+employees , including Partners, CA's and Lawyers.

Amongst the fastest growing organization in North India.

100+ customers pan India.

Presence in Delhi, Mumbai, Dehradun

MISSION

"We grow with the growth of our clients"

VISION

"To provide solutions with Honesty and Customer Satisfaction"

About AMRG

AMRG & Associates Chartered Accountants firm was established in INDIA in 1984 and has currently become one of the leading chartered accountant firms in North India.

The firm operates from its offices situated in Delhi, Mumbai and Dehradun and offers its clients a full range of services including financial and business advisory, tax and regulatory, and risk advisory services.

AMRG & Associates has a client base of more than 200 companies & individuals.

The team consists of distinguished Chartered Accountants, Corporate Financial Advisors, Risk advisors and Tax consultants. The firm represents a combination of specialized skills, which are geared to offer sound financial advice and personalized proactive services.

We at AMRG are determined to provide best services to our clientele and grow with the growth of our clients.

Our Locations

NEW DELHI	MUMBAI	DEHRADUN
AMRG Tower, 23, Paschim Vihar Extension, Main Rohtak Road, New Delhi, 1 10063	Building No. 6 Flat 304,Green Meadows C H S Ltd, Lokhandwala Township , Kandivali East, Mumbai, 400101	182, Sharda Tower, Beside Hotel Hyatt Centric, Rajpur Road, Dehradun, 248001

Associate Offices

GUJARAT | DADRA & NAGAR HAVELI | DAMAN & DIU | KARNATAKA | TAMIL NADU

PUDUCHERRY | PUNJAB | CHANDIGARH | ANDAMAN & NICOBAR ISLANDS | SIKKIM

WEST BENGAL | ARUNACHAL PRADESH | ASSAM | MANIPUR | MEGHALAYA

MIZORAM | NAGALAND | TRIPURA

AMRG & ASSOCIATES
CHARTERED ACCOUNTANTS

AMRG
& ASSOCIATES
CHARTERED ACCOUNTANTS

THANK YOU

taxsutra
ATOLL