

SEARCH, SEIZURE, AND INSPECTION UNDER GST LAW IN INDIA: STRIKING A BALANCE BETWEEN TAX ENFORCEMENT AND TAXPAYER RIGHTS

AUTHOR – MISHRA RUDRANI KUMARI RADHESHYAM* & DR. MOHAMMAD HAROON**

* RESEARCH SCHOLAR, SCHOOL OF LAW AND JURISPRUDENCE SHRI VENKATESHWARA UNIVERSITY, NH-24, RAJABPUR, GAJRAULA

** ASSISTANT PROFESSOR-ADJUNCT RESEARCH SUPERVISOR AT SCHOOL OF LAW AND JURISPRUDENCE, SHRI VENKATESHWARA UNIVERSITY

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ABSTRACT

This article critically examines inspection, search, and seizure provisions under the Goods and Services Tax (GST) regime, analyzing how tax enforcement balances compliance measures with taxpayer rights. It explores key legal safeguards, including the requirement of "reason to believe," which mandates objective evidence rather than mere suspicion for initiating search and seizure operations. Through case law analysis, the article underscores the necessity of substantial justification for such actions.

Additionally, it discusses procedural protections such as prior authorization from senior officers, search warrants, and the role of independent witnesses. The article also addresses the confiscation of goods under Section 67(2) of the CGST Act, 2017 emphasizing proportionality and evidentiary requirements. Drawing on judicial precedents, it highlights the importance of transparency, accountability, and legal compliance in tax enforcement, advocating for a balanced approach that upholds both regulatory objectives and taxpayer protections.

Keywords: Goods and Service Tax (GST), Inspection, Search and Seizure, Reason to Believe, Tax Evasion, Tax Compliance, Taxpayer Rights.

1. Introduction

Goods and Services Tax (GST) has revolutionized the indirect tax structure in India, bringing about a more streamlined tax system. However, its implementation has necessitated the creation of stringent enforcement provisions to curb tax evasion and ensure compliance. The provisions governing search and inspection are crucial to ensuring tax compliance and detecting tax evasion. The provisions relating to search, seizure, and arrest are enshrined in the Central Goods and Services Tax (CGST) Act, 2017.

These provisions, as detailed under Section 67 of the CGST Act, 2017, empower tax authorities to conduct investigations, searches, and seizures of goods and records suspected to be involved in tax evasion. However, these powers are not absolute and come with critical legal safeguards designed to prevent abuse, protect the rights of taxpayers, and maintain the balance between enforcement and fairness. This article critically analyzes the procedural framework for inspection, search, and seizure under GST, emphasizing the significance of the reason to believe standard and the procedural safeguards for the confiscation of goods.

the law mandates a clear and well-documented "reason to believe" before any action is initiated. This ensures that searches are not based on mere suspicion but on substantial evidence or facts examined objectively by a senior officer. Additionally, searches can only proceed with proper authorization from a Joint Commissioner or an officer of higher rank, safeguarding against arbitrary actions. By distinguishing between inspection and search-cum-seizure, the law also sets clear boundaries on the scope of actions permitted, reinforcing its commitment to transparency and fairness. To further protect taxpayer rights, the law incorporates procedural safeguards and promotes accountability through judicial oversight.

The framework, while enabling robust enforcement, aims to prevent any abuse of authority and ensures that actions taken are proportional, lawful, and fair. In this way, the provisions under GST reflect a balanced approach to tax compliance and taxpayer protection. Below is a structured overview of the procedural safeguards, legal framework, and taxpayer rights associated with search and seizure operations under GST.

2. Inspection under the CGST Act, 2017

Under the Central Goods and Services Tax (CGST) Act, the term inspection refers to the process of examining premises, goods, records, or conveyances to ensure tax compliance and detect possible tax evasion. It is considered a softer provision compared to a search, allowing officers to access the business premises of taxable persons, those involved in transporting goods, or individuals operating warehouses or godowns.

Inspection can also extend to conveyances carrying goods exceeding the specified value, where the person in charge must produce relevant documents or devices for verification and allow inspection. Notably, during transit, such inspections can be conducted even without specific authorization from the Joint Commissioner. Intelligence for inspections may

be gathered from various sources, such as internal scrutiny or audit proceedings, or external third-party sources like the Central Board of Direct Taxes (CBDT), Sub-Registrar offices, and the Real Estate Regulatory Authority (RERA). This provision plays a significant role in promoting compliance and preventing tax evasion while remaining less intrusive than a search.

Key Features:

- As per Section 67(1) of the CGST Act, only an officer of the rank of Joint Commissioner or above can authorize an inspection in writing.
- Such authorization is granted only when the officer has *reasons to believe* that the person has-
 - (i) suppressed transactions related to the supply of goods or services,
 - (ii) concealed stock,
 - (iii) claimed excess input tax credit (ITC),
 - (iv) violated provisions of the Act to evade taxes,
 - (v) transported or stored goods that have escaped tax payment, or
 - (vi) manipulated accounts or stocks to evade taxes.

2.1 Inspection Process under the CGST Act:

Under the CGST Act, an officer gathers intelligence and submits a request for authorization to the Joint Commissioner or a higher-ranking officer using *Form GST INS-01*, detailing the findings. If the Joint Commissioner is satisfied that there are sufficient *reasons to believe*, they issue a written authorization specifying the premises to be inspected.

The authorization in *Form GST INS-01* must outline the scope of the action. For inspections, it specifies the location and items to be examined under Part A or Part B. If it includes both inspection and search, it must detail suspicions about goods liable to confiscation or concealed documents and items, as noted in

Part C. This ensures a clear and accountable process¹⁶⁴.

2.1.1 Reason to Believe: Under GST law, the term “reason to believe” forms the foundation for initiating search and seizure operations. It refers to the knowledge of facts that, while not direct evidence, would lead a reasonable person to reach the same conclusion. According to 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.” This belief must be objective, based on relevant materials and circumstances, and distinct from mere suspicion. It requires intelligent evaluation by an honest and reasonable person.

Before issuing a search authorization, the Proper Officer must disclose the material supporting this belief, though it is not mandatory to record it in every case. Courts have emphasized the importance of this standard. In *R.J. Trading Co. v. Commissioner of CGST*¹⁶⁵, the Delhi High Court ruled that searches without jurisdictional grounds are invalid, and reason to believe cannot be equated with reason to suspect. Furthermore, in *Sheo Nath Singh v. Appellate Asstt. CIT*¹⁶⁶, the Supreme Court clarified that the courts can assess whether the belief was based on credible material but cannot question the sufficiency of the evidence.

Taxpayers have the right to challenge reason to believe in subsequent proceedings, particularly during responses to show cause notices under Section 74. Courts can scrutinize the evidence and file notings to ensure the reasons were genuine and existed before the search. As clarified in *PDIT v. Laljibhai Kanjibhai Mandalia*¹⁶⁷, reasons must predate authorization and cannot be created afterward.

If reason to believe only justifies inspection and not search, any search conducted would be unlawful, and any seized evidence would be

inadmissible. In cases where an inspection (authorized in *Form GST INS-01*) reveals grounds for a search, the officer must seek additional authorization under *Part C of Form GST INS-01*. This transition from inspection to search must comply with Section 67(2) of the CGST Act. The satisfaction of the authorized officer conducting the inspection and search is subject to judicial review, and careful adherence to legal provisions is crucial to ensure the process is valid and justified¹⁶⁸.

3. Search under the CGST Act, 2017

The term search refers to an action by government authorities to carefully examine a person, vehicle, premises, or object to find concealed items or evidence of a crime. Under GST law, searches must be conducted under proper and valid authority. While search is not specifically defined in GST law, the Shorter Oxford English Dictionary defines it as probing, scrutinizing, examining, or investigating. The power to authorize a search is a significant tool for preventing fraud but must adhere to due process, ensuring compelling reasons exist to justify the intrusion into privacy.

As per Section 67(2) of the CGST Act, a Proper Officer, not below the rank of Joint Commissioner, can authorize a search if there is reason to believe that goods liable for confiscation or documents, books, or other items useful for GST proceedings are being concealed. Such authorization, issued in *Form GST INS-01*, allows either the officer or a subordinate officer to search. The seized items can only be retained as long as necessary for examination or inquiry. If goods cannot be seized, an order may be issued to the custodian, restricting the removal or use of the goods without prior permission¹⁶⁹.

3.1 Meaning of Secreted/Concealed: The term “secreted” refers to items deliberately hidden or concealed to evade detection or to avoid legal

¹⁶⁴ Ministry of Finance, “Handbook of GST Laws and Procedures for Departmental Officers”, Chapter – 8 Search, Seizer and Arrest

¹⁶⁵ W.P.(C) No 4847 of 2021 dated 20.07.2021

¹⁶⁶ [1971] 82 ITR 147/AIR 1971 SC 2451

¹⁶⁷ CA 4081/2022 SC.

¹⁶⁸ GST-IDTC, A Jatin Christopher. Institute of Chartered Accountants of India, “Handbook on Inspection, Search, Seizure and Arrest under GST”, First Edition : August, 2022, pg 21-24

¹⁶⁹ *Supra* 1.

scrutiny. While the GST law does not specifically define secreted, its interpretation aligns with similar provisions under Section 105 of the Customs Act, 1962. According to legal dictionaries and case law, secreted means deliberately hiding goods, documents, or other items in a manner intended to prevent discovery by authorities.

In the landmark case *Gian Chand & Others v. State of Punjab (1961)*¹⁷⁰, the Supreme Court clarified that secreted refers to items not kept in their normal or usual place or items intentionally placed in locations where authorities would struggle to find them. This can include goods or documents hidden physically or through methods like encrypted files or manipulated records.

Under Section 67(2) of the CGST Act, the determination that goods, documents, or other items have been secreted is a crucial element in establishing reason to believe and justifying a search and seizure. For goods to be seized under this provision, their concealment must be intentional, using methods or locations specifically designed to avoid detection.

The officer searching must comply with rules, such as issuing search authorization online through the CBIC DIN Portal, which includes key details like the Document Identification Number (DIN), officer's name, premises to be searched, and validity period of the authorization. Searches must be limited to confiscable goods or concealed documents, books, or items. If access to the premises is denied, officers may invoke Section 67(4), allowing them to break open locked receptacles, but this power should only be used as a last resort.

However, courts have stressed the importance of exercising this power judiciously and not using it routinely. Sealing premises for extended periods without valid justification has been questioned by the judiciary, as it can cause unnecessary disruption to business operations.

Following are the case laws in support of the above-stated points.

(i) *Singhi Buildtech Pvt. Ltd. v. Commissioner of Commercial Tax*¹⁷¹, The Karnataka High Court emphasized that premises should not be sealed unnecessarily during a search. The Court observed that sealing should only be done in cases where there is a legitimate need, and the action should be proportionate to the investigation.

(ii) *M/s Napin Impex Pvt. Ltd. v. Commissioner of DGST, Delhi & Ors.*¹⁷², The Delhi High Court ordered the authorities to unseal premises that had been sealed for over a month. The Court stressed that indefinite sealing is impermissible, especially when there is no valid reason for prolonging such action.

(iii) *Anopsinh Kiritsinh Sarvaiya v. State of Gujarat*¹⁷³, The Gujarat High Court directed GST authorities to focus on confiscable goods or articles instead of unnecessarily keeping a warehouse sealed. The Court highlighted that sealing should not become a tool for excessive or prolonged disruption of the taxpayer's business.

3.2 Completion of Search Proceedings and Payments during Search:

When an inspection under Section 67(1) is extended to a search, the discovery of concealed goods or documents leads to seizure, either to initiate confiscation proceedings or to facilitate further investigation. Once the search is concluded and the officers leave the premises, the authorization in *Form GST INS-01* is considered exhausted.

During a search, GST officers must ensure that the proceedings are completed swiftly and in strict compliance with the law. Any voluntary payments made during a search must be documented properly in *Form GST DRC-03*, along with *Form GST DRC-01A* under Section 74(5) of the CGST Act. If payments are made involuntarily without proper documentation, taxpayers have the right to contest them and

¹⁷¹ 2019 (22) GSTL.10 (KAR)

¹⁷² W.P.(C) 10287/2018

¹⁷³ R/Special Application No. 2705/2020

may seek refunds through Form GST RFD-01 under "other payments" on the GST Portal. This ensures that payments are transparently recorded, allowing for judicial scrutiny if necessary.

Importantly, GST officials cannot force an assessee to deposit tax at the time of search and seizure proceedings. Even requesting a post-dated cheque for tax payment during a raid is prohibited, as it violates Article 265 of the Constitution of India, which ensures that no tax can be collected without the authority of law. The judiciary has reinforced this stance, particularly in cases like *M/s Remark Flour Mills Private Limited v. State of Gujarat*¹⁷⁴, where the Gujarat High Court condemned the practice of collecting post-dated cheques during inspection/search and seizure proceedings. The Court held that this practice is not permissible as a means of revenue collection. This view was reiterated in previous rulings, such as in *Atul Motors v. State of Gujarat*¹⁷⁵ and *Automark Industries (Pvt) Ltd v. State of Gujarat*¹⁷⁶, where it was again ruled that post-dated cheques cannot be demanded during such proceedings.

The judicial system ensures that the powers granted to GST officers for search and seizure are used appropriately. Any abuse or overreach of these powers, particularly when it comes to forced payments, can be challenged. Through judicial scrutiny, the actions of tax authorities are held to strict standards, ensuring that taxpayers' rights are protected and that all search and seizure operations are conducted lawfully¹⁷⁷.

4. Confiscation and Seizure of Goods

Under Section 130 of the CGST Act, goods, conveyances, and items involved in tax evasion may be subject to confiscation. The section outlines several scenarios where confiscation applies, including when goods are supplied or

received in violation of the GST provisions with the intent to evade tax when goods liable for tax are not accounted for in the books, when goods are supplied without proper registration, or when a conveyance is used for transporting goods in contravention of the Act unless the owner proves that it was done without their knowledge. The Gujarat High Court in *Baboo Ram Hari Chand v. Union of India (2014)*¹⁷⁸ emphasized that confiscation powers should be exercised only when there is a reasonable belief that goods are liable for confiscation. The court further ruled that a composite order, such as a *Panchnama-cum-seizure* order, is impermissible in law¹⁷⁹.

During search proceedings under the GST Act, various items may be seized, including goods, documents, books, and other items. Goods that are unaccounted for or suspected of being involved in tax evasion are liable for seizure. Similarly, any books of accounts, records, or electronically stored data that could aid in an investigation or inquiry can also be seized. This includes electronic devices like computers or hard drives used for maintaining accounting records. To carry out a lawful search and seizure, officers must be authorized through a search warrant, typically issued in *Form GST INS-01*. The search must be conducted in the presence of at least two independent witnesses, and the person in charge of the premises must be informed of the reasons for the search and the seizure.

The officer searching is required to prepare an inventory of all seized goods, documents, and items. This inventory must be shared with the person from whom the items are seized. The Order of Seizure in *Form GST INS-02* includes key details such as the purpose of the proceedings, the date and location of the search, the names of persons present, the details of the discovery, and the efforts made to extricate the goods or documents. If confiscation is not possible, a prohibition order may be issued, preventing the

¹⁷⁴ R/Special Civil Application No. 4835/2018

¹⁷⁵ R/Special Civil Application No. 959/2015

¹⁷⁶ 2014 SCC Online Gujarat 14217

¹⁷⁷ CMA Virendra Chaturvedi, "Inspection Search and Seizure Under GST Law", Tax Bulletin, July, 2023 Volume – 139, https://icmai.in/TaxationPortal/upload/IDT/Article_GST/322.pdf

¹⁷⁸ Gujarat HC, 2014 (9) TMI 144

¹⁷⁹ Sanjiv Agarwal, "Search and Seizure under GST Law (Part-4)", Sept. 29, 2022, <https://www.taxmanagementindia.com>

removal or disposal of the goods without prior permission.

Seizure of cash is another aspect of GST law, though judicial interpretation varies. In *Kanishka Matta v. Union of India*¹⁸⁰, the court upheld the seizure of cash, while in *Arvind Goyal (CA) v. Union of India*¹⁸¹, it directed that seized cash be returned with interest. This indicates that while cash can be seized, its treatment is subject to judicial scrutiny, with courts focusing on whether the seizure is justified under the law¹⁸².

4.1 Retention and Release of Seized Documents, Books, or Goods: Once goods, documents, or books are seized under the GST Act, they must be returned if not used in the Show Cause Notice (SCN) within 30 days. Goods not part of the SCN must be returned within this period. If retention is needed for further investigation, the officer must justify the extension. The Gujarat High Court in the case of *Universal Dyechem Pvt. Ltd. v. Union of India*¹⁸³ emphasized the prompt return of seized items not relied upon in the SCN to protect taxpayer rights.

Goods may be provisionally released if the owner provides a bond and a bank guarantee equivalent to the value of the goods, tax, penalties, and interest. If the goods are not produced as required, the bank guarantee can be encashed.

Notified goods, such as those prone to evasion, are released after the payment of the lower of their market price or the tax, penalties, and interest due. If the payment is not made, the goods are disposed of, with proceeds applied to offset liabilities. Final release is done by the department, without a request from the owner.

The seizure must be followed by a Show Cause Notice within six months, extendable by another six months with valid cause. If no notice is issued within this period, the goods must be

returned. If goods are perishable or disposed of, compensation or monetary value is provided¹⁸⁴.

5. Conclusion

The powers granted to GST authorities for conducting searches, seizures, and confiscations are vital for enforcing tax compliance. However, these powers must be exercised cautiously to ensure that taxpayers' rights are not unjustly impacted. Seizures should adhere to legal procedures, with seized goods and documents returned promptly if they are not required for further investigation. The system of provisional and final release of goods safeguards taxpayers' interests while securing government revenue.

Judicial scrutiny helps ensure that searches are based on substantial evidence, protecting both taxpayers from unlawful actions and the authorities from potential misuse of power. Courts have highlighted that the seizure of goods or documents must be based on reasonable belief and documented evidence. The return of seized items must be done within prescribed timelines, with extensions granted only when justified. Thus, Judicial oversight ensures that these powers are used lawfully, protecting both taxpayers and the integrity of the system.

Recommendations for Strengthening Search and Seizure Procedures under GST:

Based on the above discussion the research suggests some important points to be adopted to strengthen the goods and services tax regime and save the taxpayer's rights in the country. These are:

(i) Enhancing Documentation and Transparency: While the "reason to believe" standard requires tangible evidence, authorities should place greater emphasis on documenting these reasons before initiating search or seizure actions. Maintaining a detailed record of justifications will improve accountability and prevent arbitrary

¹⁸⁰ Madhya Pradesh HC, W.P. No. 8204/2020

¹⁸¹ Delhi HC, W.P.(C) 12499/2021

¹⁸² Somesh Shukla, "Inspection, Search, Seizure and Arrest," Chapter XIV, Lucknow University.

¹⁸³ 2021 (46) G.S.TL.119 (Guj)

¹⁸⁴ Sikander Sachdeva, "Seizure During Search Proceedings under GST", 26 Sept, 2024, <https://taxguru.in>

enforcement. These records should be subject to judicial review when challenged.

(ii) Establishing Clearer Guidelines: To minimize disputes and ensure consistency, GST authorities should provide comprehensive guidelines for officers on the search and seizure process. This should include measures to prevent unnecessary seizures and encourage a preliminary on-site examination of documents to avoid excessive confiscation.

(iii) Training and Capacity Building: Regular training programs should be conducted for tax officers, focusing on procedural safeguards, ethical conduct during searches, and the importance of proper documentation. Strengthening officers' understanding of taxpayer rights will help prevent misuse of power and reduce instances of harassment.

(iv) Strengthening Accountability in Confiscation: Stricter measures should ensure that goods are confiscated only when necessary, with clear justifications and documented evidence. Transparent and accessible compensation mechanisms must be established for wrongful confiscation. Additionally, authorities must adhere to legal timelines, ensuring the return or disposal of seized goods within six months unless valid extensions are granted.

(v) Enhancing Public Awareness: Educating taxpayers on their rights during search and seizure operations is crucial. Public awareness campaigns will empower businesses to navigate the process effectively, reducing undue disruptions and ensuring procedural fairness.

By implementing these measures, the GST framework can strike a more effective balance between tax enforcement and the protection of taxpayer rights, fostering greater transparency, fairness, and compliance.