Handbook on Inspection, Search, Seizure and Arrest under GST

(July, 2025)

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

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Foreword

Over the past eight years since the introduction of the Goods and Services Tax (GST) in India, the law has seen several amendments shaped by the feedback from businesses and other stakeholders. The tax structure has gradually evolved through revisions in rates and compliance procedures, with sustained efforts to address challenges related to technology, return filing, and overall ease of doing business. The GST Council, comprising representatives from the Central and State Governments, has played a pivotal role in shaping key policies. Overall, the implementation of GST has led to notable positive outcomes, including streamlined tax administration, reduced tax evasion, and the establishment of a unified national market.

Recognizing the need for capacity building and awareness from the very inception of the GST regime, the Institute of Chartered Accountants of India (ICAI) has taken proactive steps to facilitate smooth and well-informed compliance. Through its GST & Indirect Taxes Committee, ICAI has served as a crucial link between the Government, its members, and other stakeholders during the transition to GST. The Committee has consistently led initiatives to educate and support members, other stakeholders and the public at large through technical publications, newsletters, e-learning modules, training programmes, certificate courses, webcasts, and more. It has also actively represented the concerns and suggestions of professionals before the Government, ensuring that the implementation of the law is both practical and equitable.

I am pleased to note that the GST & Indirect Taxes Committee has released a revised edition of its publication, *"Handbook on Inspection, Search, Seizure and Arrest under GST."* This comprehensive handbook simplifies the complex procedural and legal framework governing enforcement actions under GST. Updated to reflect developments as of 15th July 2025, the publication serves as a valuable resource for strengthening fair and accountable tax administration.

I appreciate and commend the efforts of CA. Rajendra Kumar P, Chairman and CA. Umesh Sharma, Vice- Chairman, along with the other members of the GST & Indirect Taxes Committee and all contributors who have played a role in bringing out this important publication for the benefit of members and stakeholders.

I am confident that the members will find this publication immensely useful in carrying out their professional duties and statutory responsibilities with greater efficiency and confidence.

CA. Charanjot Singh Nanda
President, ICAI

Date: 22.07.2025
Place: New Delhi

Preface

The introduction of the Goods and Services Tax (GST) marked a transformational shift in India's taxation system. The Government's timely reforms, clear guidance to taxpayers, and continuous upgrades to the GST portal have been the key contributors to the success of GST. These measures have not only enhanced the ease of doing business but also strengthened the tax base. A broader tax base, coupled with automated systems, has boosted Government revenues and improved transparency. By eliminating inter-State entry barriers, GST has paved the way for a truly integrated national market, driving economic growth.

In any self-assessment-based tax regime, provisions relating to inspection, search, seizure, and arrest serve as essential enforcement tools to ensure tax compliance and protect Government revenue. GST is no exception. These powers enable authorities to examine records, detect discrepancies, and gather evidence—deterring tax evasion and fostering a level playing field among businesses. Recognising the importance of these provisions, the GST & Indirect Taxes Committee has revised the publication *"Handbook on Inspection, Search, Seizure and Arrest under GST"* to incorporate amendments up to 15th July 2025. The Handbook adopts a pragmatic and structured approach, combining legal interpretation with procedural clarity, and also examines the impact of other related laws on the implementation of these provisions.

We extend our sincere gratitude to CA. Charanjot Singh Nanda, President, ICAI, and CA. Prasanna Kumar D, Vice-President, ICAI, for their unwavering support of the Committee's initiatives. We extend our heartfelt thanks to the Committee members for their dedicated involvement in every project. We are especially grateful to CA. A Jatin Christopher for revising this Handbook and to CA. Abhay Desai for reviewing it. We also acknowledge the valuable technical and administrative assistance provided by CA. Tanya Pandey and CA. Kapil Kumar Sharma of the Committee Secretariat in bringing this work to completion.

While every effort has been made to present the correct and legally sound position, differing interpretations may exist on certain issues discussed in this

Handbook. We welcome readers to share any inadvertent errors or suggestions for improvement. Feedback may be sent to **gst@icai.in**.

CA. Umesh Sharma
Vice-Chairman
GST & Indirect Taxes Committee

CA. Rajendra Kumar P
Chairman
GST & Indirect Taxes Committee

Date: 22.07.2025
Place: New Delhi

Contents

Readers may make note of the following while reading the publication:

Unless otherwise specified, the section numbers and rules referred to in this publication pertain to Central Goods and Services Tax Act, 2017 and Central Goods and Services Tax Rules, 2017 respectively.

Chapter 1
Introduction

1.1 Inspection under GST

Inspection is not search, these are two different proceedings and the subtility of the differences must be appreciated from the law itself. Inspection is a permitted method to access a taxpayer's premises, but only as an anti-evasion measure as laid down in the law in the form of 'pre-requisites' to invoke the exceptional powers allowed. After all, GST is a self-assessment-based tax regime. Any provision that appears to enter into the self-assessment regime, needs the express consent of the Parliament. Any proceeding that invokes such authority must be tested for its validity before applying the same as it is an exceptional power contained in section 67 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act or Central GST Act). This Handbook discusses the contours of this power and presents the dos and don'ts that taxpayers and professionals need to be aware of, as misapplication of this provision is easily possible, especially due to the wide-ranging powers that tax authorities enjoyed under the earlier tax regime.

1.2 Mandate to 'question the questionable proceedings'

Section 160(2) of the CGST Act prohibits a taxpayer from 'questioning invalid proceedings' as responding to matters contained in an invalid notice (order or communication) tantamount to entertaining such proceeding indirectly. This provision may be understood as taxpayer giving validity to an otherwise invalid proceeding by (i) failing to question its validity or (ii) attending to it on merits before examining its validity. This is also called 'acquiescence', which means 'admitting its validity by omission or submission' to requirements in such notice, order or communication.

1.3 'Access to business premises' does not authorize 'inspection'

This Handbook discusses the scope of section 71 of the CGST Act and the extent to which the power of access under this section can be availed by the proper officers to carry out their objects. Taxpayers are well within their rights

in law to question the validity of any action by an officer for the purpose of seeking access to business premises including checks and verification based on a logical exercise of authority, akin to those under earlier tax regime. Also, the powers under section 71 appear to overlap with those under section 67 and the nature of their difference is sought to be brought to reader's attention in this Handbook.

1.4 GST ushers in a 'self-assessment' tax regime

If one were to look for the most powerful provision in the entire CGST Act, section 59 would take the top spot. It is a very short provision, but it appoints the registered person to be the only one with authority to conduct 'assessment' of tax payable under the Act (and under IGST and Cess Acts). When the law appoints the registered person to carryout assessment of tax payable, the Proper Officer cannot seek to carryout assessment. And once self-assessment has been made and the Proper Officer is dissatisfied with the outcome of such self-assessment then it is the responsibility of the Proper Officer to produce material to question the validity of the self-assessment carried out by the registered person and demand tax, in accordance with the procedures established in this law.

Section 155 of the CGST Act places the 'burden of proof' upon the registered person only in respect of 'eligibility to input tax credit' and therefore, by implication of this provision, the burden of proof on 'all other aspects' of assessment carried out, lies on the Proper Officer. This is evident from the provisions of section 75(7) of the CGST Act, which only makes it necessary that show cause notice issued should contain specific 'grounds' which support the demand and also requires the Adjudicating Authority to confine the order confirming demand, if any, to be based on those 'grounds' and no other.

1.5 Concept of jurisdiction is central to Government intervention

Intervention by Government (GST department) is the anti-thesis of self-assessment in GST law. As such, any intervention will be in violation of mandate in section 59 of the CGST Act. It is for this reason, that express language in the statute that permits any form of intervention must be examined as to (i) who (ii) when (iii) what extent is it permitted, must be carefully considered.

When intervention is within the boundaries of these touch points, then such exercise of authority will be valid on jurisdiction. When intervention exceeds these boundaries, then such exercise of authority will be without jurisdiction. Once jurisdiction is found wanting, then even legitimate dues will be tainted and irrecoverable. Notice issued without Officer exercising jurisdiction validly, will also be tainted with the same illegality. Just because a notice has (somehow) come to be issued, does not mean jurisdiction will be assumed.

<table>
<tr><th colspan="2">Registered Persons</th><th colspan="2">Unregistered Persons</th></tr>
<tr><th>Officer</th><th>Section Applicable</th><th>Officer</th><th>Section Applicable</th></tr>
<tr><td>Officer to whom RP is mapped online</td><td>Section 61 to 64 (except section 63)</td><td rowspan="2">Officer having territorial jurisdiction where URP is found to operate</td><td rowspan="2">Section 63 (registration cancelled or not registered at all)</td></tr>
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<tr><td>Officers (Central or State) having territorial jurisdiction where RP operates</td><td>Section 67 to 72:
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➢ Inquiry only into ‘evasion of tax’</td><td>Officers (Central or State) having territorial jurisdiction where URP is found to operate</td><td>Section 67 to 72:
➢ Authorization by JC in INS1
➢ Inquiry only into ‘evasion of tax’</td></tr>
</table>

Officer who does not have (i) territorial (ii) subject matter and (iii) administrative authorization, will not enjoy jurisdiction to intervene and

examine matters relating to GST compliance. It is important to test when any proceeding is initiated:

Section	Persons covered	Pre-condition	Areas of review
Section 61	RP	Returns filed online	Discrepancies only
Section 62	RP	Returns outstanding even after GSTR 3A issued	Non-filing of returns only
Section 63	RP or URP	➢ Registration not in existence ➢ Reliable information showing existence of undischarged GST dues	Specific dues
Section 64	RP	➢ Prior permission ➢ Evidence showing tax liability ➢ Interests of revenue at risk	Specific dues
Section 65	RP	Order (or assignment) to undertake audit for FY or part thereof	Unlimited scope of review
Section 66	RP	Valid proceeding initiated under any other provision	Sub-set of underlying proceeding
Section 67, 70 and 71 *	RP or URP	➢ Prior authorization in INS1 ➢ Area of 'evasion of tax' listed in	Specific areas of 'evasion of tax' only

		INS1 ➢ Specific location listed in INS1	
Section 68	RP or URP or transporter	➢ Consignment to be in 'movement'	Verify documents in rule 138A
Section 69	RP or URP or other person	➢ Prior authorization by 'Commissioner' to arrest	Specified offence exceeding Rs.5 cr.

** section 72 is to seek assistance of other persons.*

It is essential to determine validity of jurisdiction to avoid participation in invalid proceedings. For this reason, it is important to ask the following questions to confirm validity of jurisdiction:

- Which is the administrative department Officer belongs to – Centre or State?
- Which is the provision under which these proceedings are initiated – Chapter XII, XIII or XIV?
- Is the taxable person registered or unregistered?
- Which administrative department is this registered person mapped online?
- Is the said Officer a 'Proper Officer' to undertake proceedings under said provision?
- Is permission (64) or order (65) or authorization (67) issued in prescribed form, if any?
- In addition to authorization (as above), are pre-conditions – non-filing of returns (62) or evidence of taxable TO (63) – to invoke said powers shown to exist at the start of proceedings?
- What are the years for which authorization (as above) has been granted?
- What are the aspects (i) stock (ii) output tax (iii) input tax credit (iv) other evasion, specified in the authorization (as above) granted?

1.6 No burden to prove innocence

Previously, the taxpayer was expected to prove the innocence or demonstrate the correctness of tax position (levy, classification, valuation, credit, etc.) adopted and Revenue would merely question its correctness. But in GST, given that every administrative proceeding is laid down with a clear 'due process', it may be argued that the provisions of section 59 read with section 155 of the CGST Act, makes it abundantly clear that the taxpayer does not bear the initial burden to prove that the self-assessment carried out is accurate. This is significant and one must take time to read any good book on 'Rule of Law' to appreciate this concept and to recognize the responsibility that GST has placed the burden on the Revenue in case of dissatisfaction over the self-assessment carried out by any registered person.

1.7 Burden in case of 'tax evasion'

Where a taxpayer is answerable to a notice demanding tax, involving evasion of tax and once the Revenue makes out a *prima facie* case on facts, it raises a presumption against such taxpayer. Now, it becomes imperative for the taxpayer to either rebut that presumption or to affirms that presumption due to failure of rebuttal. There is a difference between 'burden' and 'onus' under the Evidence law. where the burden always remains on the person whom the law states to bear it, but when new material is introduced, in rebuttal or otherwise, then the onus to prove all the requirements of its admissibility shifts to the person introducing such material. In *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi & Ors*. *AIR 1960 SC 100*, the apex court has held that when both sides introduce evidence, the question of 'burden of proof' becomes academic. Care must be taken not to displace the burden by doing anything that can cause it to shift on to the taxpayer. After all, in a self-assessment-based tax regime, the Revenue must show that a *prima facie* case exists against the taxpayer's determination of liability and it does not suffice to put forward an alternate interpretation and leave the taxpayer to prove the correctness of the self-assessment carried out. To do so would be violative of the mandate contained in section 59 of the CGST Act.

1.8 Applicability of the principles of Evidence law to GST

When it comes to demanding tax, that has already been self-assessed, it is not sufficient to merely doubt its correctness and leave the taxpayer to run around to get the notices set aside. Any statement should be made responsibly. The standard of care in establishing facts cannot be anything short of the standards laid down in the Indian Evidence Act (and now, Bharatiya Sakshya Adhiniyam). While the rigorous rules of procedure contained in *Indian Evidence Act* are applicable only to matters before a Court, the Apex Court in the case of *Chuharmal, Etc. v. UoI & Ors AIR 1988 SC 1384* has stated that since equitable principles of common law are contained in Indian Evidence Act, their applicability to taxation matters is not barred and must be admitted to establish facts for the purpose of determination of question of law which relies on established facts.

This Handbook discusses the 'due process' laid down in each provision in its strict sense because the Act contains the intent of the Legislature. In *EP Royappa v. State of TN, AIR 1974 SC 555, the Supreme Court (hereinafter referred to as SC)* stated that passion to protect interests of Revenue does not authorize bypassing the 'due process' laid down in the law.

1.9 Applicability of the principles of Administrative Law to GST

The principles of natural justice are touted all too often, but the roots of the requirement that these principles must be adhered to flow from Administrative Law. It is an uncodified law like Torts. Administrative Law contains the requirements of administrative action to meet the standards of 'equity, justice and good conscience' in any civilized society which claims that rule of law prevails.

If a Proper Officer conducts audit under section 65 of the CGST Act and takes exception to a certain tax position adopted by the registered person and issues Form GST ADT - 02 with an observation that certain amount of tax is payable, then if the same officer were to sit in judgement to adjudicate, it would be in direct violation of the first principle of natural justice (Para 1.18). It is for this reason that *CBIC Circular 31/5/2018-GST dated 9 Feb 2018 amended by Circular 169/1/2022-GST dated 12 Mar 2022 (and further amended by Circular 239/33/2024-GST dated 4 Dec 2024), in amended Para*

6 and 7 to state that Officers of Audit and Intelligence Commissionerate are permitted to carry out their audit or investigations and issue show cause notice. But for purposes of adjudication, the file and the notice must be transferred to Proper Officer (subject to pecuniary limits) in the Executive Commissionerate to hear the noticee and adjudicate. This administrative segregation of audit or investigation and subsequent adjudication by Central tax administration is to ensure that the first principle of natural justice (Para 1.18) is upheld. However, State tax departments appear to ensure independence in adjudication even without this form of express segregation of functions, in view of the merged functions practiced without any objections in earlier tax regime. With specific reference to SCN issued by DGGI where adjudication is carried out by Common Adjudicating Authority (CAA) in Executive Commissionerate, review, appeal, revision and all attendant proceedings which are specified in CBIC *Circular 250/7/2025-GST dated 24 Jun 2025* will remain with those superior authorities within territorial jurisdiction and exercising these powers over orders of CAA. Where Appellants are not registered in the State where appeal is to be filed, due to jurisdictional territory of CAA, temporary login credentials must be obtained in order to file online appeals within the limitation applicable for appeals.

The show cause notice can neither be vague nor allegations be without evidence commensurate with the severity of allegations levelled against the noticee. The Apex Court has held in *CCE v. Brindavan Beverages (P) Ltd. (2007) 213 ELT 487* that defective notice is incurable and fatal to the demand. This principle can be found in section 75(7) of the CGST Act which states that the grounds on which an order may be passed must be the very grounds on which the notice was issued. No adjudicating authority is empowered to cure deficiencies in the notice which upholds the second principle of natural justice (stated above).

1.10 Overlook ‘mistake, defect or omission’ but to a limited extent

Interestingly, section 160(1) of the CGST Act permits ‘mistake, defect or omission’ to be overlooked but to a very limited extent. In case of any proceedings, if the communication conveys that the ‘substance and effect’ of what is set out to be communicated as to its ‘intent, purpose and requirements’ then, any mistake, defect or omission will not be fatal to the proceedings. If a notice states, “please show cause why penalty as per the

law should not be demanded", then section 160(1) of the CGST Act may not be able to save this notice. However, if the notice was to state "please show cause why penalty under section 122 should not be demanded" then, penalty under section 122(2)(a) or (b) may be determined based on whether the notice is issued under section 73 or 74 or 74A of the CGST Act, respectively.

The principle of *audi alteram partem* requires that allegations be clearly stated so that the noticee is not denied justice at the threshold, as a notice with secret allegations incapacitates the noticee putting forward a reasonable defence. The noticee must be 'put at notice' in a clear, complete, and comprehensive manner about the allegations along with evidence in support of the said allegations. A notice cannot expect the noticee to 'fill in the blanks'. The SC has stated in the case of *State of Orissa v. Dr (Ms.) Binapani Dey & Ors AIR 1967 SC 1269* that even where the statute does not require specifically that the principles of natural justice are to be followed, they must be followed because when any proceeding is capable of adversely affecting the rights of any person, adherence to the principles of natural justice is imperative and absence of specific requirement to do so, does not authorise injustice in the very process of adjudication.

This Handbook discusses each ingredient stated in the law carefully and only after satisfaction of its compliance should taxpayer respond, and taxpayer's response must also be within the limits of the expectations in the respective provision in the law.

1.11 Cannot be faulted for 'active disobedience' when proceedings are invalid

Where a proceeding is found to be invalid and does not explicitly disclose the provisions of law under which it is being initiated, the taxpayer cannot legally be found fault for disobedience in such proceedings. When any taxpayer (or other noticee) in any proceeding approaches High Court alleging violation of natural justice or abuse of power or of process, the High Court will first examine if the Proper Officer was informed of the perceived misapplication of law and consequent injustice meted out to the taxpayer. Merely on an apprehension that justice will not be done, one cannot rush to High Court for redressal. Only after the Proper Officer is 'put at notice' that the proposed action is not in accordance with the mandate in law and in spite of this notice, the Proper Officer proceeds, then the High Court will entertain a complaint (or petition) to interfere and put a stop to such deviation. This is referred as

duty of the person who seeks redressal to first 'demand justice' from the person (who is to be complained against), before making it clear that a complaint (or petition) is justified and maintainable. Very often, by demanding justice, the injustice that would have ensued by incorrect administrative actions will be readily redressed by the same person.

Where the taxpayer suffers an unjust notice (or proceeding) and submits to those proceedings, then such taxpayer cannot be seen objecting to that which has been acquiesced (or consented). *Vigilantibus non dormientibus jura subveniunt* is a latin maxim which means, the law will not help those who sleep on their rights. If a taxpayer wishes that rights, remedies, and safeguards provided by Legislature be followed, then its abuse must be actively contested not by ignoring it but by politely 'putting at notice' the Proper Officer who will be willing to reconsider the proposed action when the illegality is brought to his attention. There is no need for a taxpayer to presume that the Proper Officer is acting deliberately in a *mala fide* manner.

This Handbook discusses CBIC's instructions and the checks and balances meant to prevent miscarriage of justice.

1.12 Limited scope for arrest of taxpayer's consultant

Tax-consultant's proximity to taxpayer's affairs raises a question whether the Consultant can also be implicated in prosecution proceedings. The answer lies in a careful examination of the applicable statutory provisions.

On a perusal of the arrangement of section 122 (and later section132 too), it is observed that:

- Section 122(1) applies to 'taxable persons'
- Section 122(1A) applies to 'mastermind' of fictitious billing rackets
- Section 122(1B) applies to e-commerce operator liable for TCS compliance
- Section 122(2) applies to 'registered persons'
- Section 122(3) applies to 'any person'.

The consultant, who is not taxable person or the mastermind or noticee (defending a tax / credit demand under section 73 or 74 of the CGST Act), can come within the operation of 'any person' in section 122(3) of the CGST

Act to be liable for penalty of Rs.25,000 in CGST Act (25,000 under Central GST and 25,000 under State GST).

Adverting to section 132(1), the opening words are:

- Whoever commits;
- Whoever causes to commit and retain the benefits arising out of, (and lists various offences).

In order to examine the offences, care must be taken to differentiate between the 'hands' that carry out the offence and the 'mind' that authorizes them. 'Commit' does not make reference to the hand but the mind. While the mind will be proceeded against, the hand will only be an accessory.

Unless an 'offence', as listed in clauses (a) to (d) of section 132(1) and punishable under sub-clause (i) or (ii) of section 132(1) and offences punishable under section 132(2), can be shown, action against taxpayer's consultant under section 69(1) is wholly impermissible. To 'show' a principal offender, it does not require that prosecution of such principal offender must conclude. Without a mind, the hand is doubtful. The principal offender must be named and prosecution launched even if absconding and evading trial. Warrant issued by Commissioner cannot be used to collect evidence of (alleged) abettors of any offence; for that, powers are vested under section 70 (power to summon persons to give evidence and produce documents). To implicate a consultant, it is not sufficient to show that the consultant was aware of the mischief being carried out but to show that the consultant was complicit in the commission of the alleged offence.

One 'who commits or *causes to commit and retain the benefits arising out of*' offences listed in section 132(1) can be prosecuted. Clause (l) of section 132(1) specifically covers a person who abets the commission of any of the offences listed in section 132(1).

The consultant must not only advise taxpayers against indulging in offences but must deny extending their services and expertise to persons who persist in such misadventures.

This Handbook offers in-depth examination of the legal provisions of sections 69 and 132 and provides some background on the purpose of arrest and surveys the extant legal framework on 'bail and bond'.

1.13 'Ingredients' in statutory definition of 'offence'

Rights are those that must be enforceable in a course of law. What sort of right would it be if anyone can infringe upon it and rob the person of that right? Enforceability is the touchstone of all rights. Likewise, everything else that entails a remedy in law requires to be legally enforceable. And to be enforceable, it must be clearly defined in the statute and not left to the common sense understanding in society which is ever changing and uncertain.

By this basic courtesy in law, offences too need to be defined for any non-compliance to be considered 'an offence'. Definition is basically a description of actions or inactions that the given law frowns upon. These are also referred as 'ingredients' of the offence as defined in the statute. Care must be taken to study offences listed in sections 122 and 132, which appear to be deceptively similar but actually have vast differences (discussed later).

It is the importance of this requirement for one to be mindful to carefully consider the 'statutory definition' of any offence. Any proceeding that calls out any offence must place on record evidence in support of the allegation which must be (i) pleaded and (ii) proved. If the offence is not 'pleaded' in the notice, the adjudicating or appellate authority cannot confirm its incidence. And the offence pleaded needs to be 'proved' in adjudication, subject to consideration in appeal, if preferred by the taxpayer.

1.14 Confession versus admission

Used as synonyms, there are several important differences that need to be considered. Without burdening this Handbook, suffice to motivate further study of the topic by pointing out that 'confession' ends further proceedings in the matter as there remains nothing more to be discovered in adjudication, and 'admission' is in respect of one or more fact which when accepted as undisputed, supplies the ingredients that make up the offence.

Confession given cannot be readily accepted. It must be examined if the party making the confession understands the statutory definition of the offence; for example, it is not made by force or for other reasons. The objective of investigation is to punish the guilty party and not just any willing party.

Admission refers to certain facts, which form the ingredients in the definition of the offence, for example, no understanding of its statutory definition is

necessary because the acceptance here is not on the offence but of the ingredients in its definition. Unlike confession, admission of any given fact, its existence or absence, can be by a third-party too.

Admissions made can be due to misunderstanding. Admission must be as a matter of fact and not as a matter of opinion of the accepting party. Admissions can turn out to be incorrect or false. Other evidence may disprove the admission. Admissions may even be retracted or modified. Admissions secured forcibly lack probative value. Deep understanding of these aspects is extremely relevant to determine whether the allegations in a notice are sustainable in law.

1.15 Intention versus motive

Motive is the ultimate reason that explains a person's actions. Actions that can be traced back to its origin. Often, motive is undisclosed. Intention is knowledge and awareness of immediate consequence of actions. Although they may appear synonymous, an example may help. If a person were to rob a bank to feed poor people, the person's motive may be noble, but his intentions are bad.

Offences require 'intention' to evade tax. For example, where supply is made without issuing tax invoice, the intention is to evade tax although the ultimate motive may be to avoid payment of income-tax on profits arising from this venture. GST concerns itself with the immediate consequence of not paying output tax even if not paying output tax may not be the only goal in this venture. Again, this is not something that can be discussed in sufficient detail to do justice to the issues involved in this topic but suffice to present the distinction so as to point to deeper study in due course.

1.16 Accident versus mistake

It is very common to state that incorrect data was submitted by taxpayer 'accidentally' and expect remedy by way of opportunity to rectify as well as leniency in imposition of harsh penalties. Mistake is used interchangeably with accident. And when the expression 'error' is used, their distinction becomes even less clear.

An illustration may help. If a gun were dropped on a table and it got fired, injuring a victim in the leg, it is an accident as there was never any intention to fire the gun. But if due to incorrect identification of the person to be fired upon with the gun, the victim is injured, it is a mistake. Mistake here is that

one of the ingredients of the proposal that went bad. Ingredient being the identity of the person, there was a clear proposal to fire upon using the gun.

Accidental firing is less serious offence, whereas mistake is very serious and all consequences associated with the original proposal, had it been executed as originally planned, will follow against the accused person.

Now, it becomes clear that there cannot be any 'accidental' filing of erroneous data in GST returns. There may, at best, be a mistake in filing GST returns. Read with the provisions of self-assessment under section 59, data as presented on the Common Portal is required to be presumed as correct, Revenue is welcome to act on this presumption and take necessary action. In the light of this discussion, consider the treatment under section 75(12) and then CBIC's Instruction No. 1/2022-GST dated 7 Jan 2022, with reference to the difference between tax payable as per Form GSTR-1 and Form GSTR 3B, will seem fair and reasonable.

1.17 'Forced recovery' or 'spot recovery' in GST

No recovery of tax can be made 'on the spot'. The due process prescribed in the law is that the taxpayer must be 'put at notice' first. Demand for tax is required to be made by issuing a notice to the taxpayer under section 73, 74, 74A or even 76, howsoever, 'open and shut' the liability may appear to be.

Recovery of 'undisputed arrears' is permitted by section 75(12) to be made under section 79 without the issuance of a notice. Although, a number of High Courts have condemned this practice, the Parliament has passed the insertion of an explanation to section 75(12), and this is likely to see a lot of resistance from taxpayers as the Revenue will rely on this amendment citing 'useless formality theory'. This theory has been entertained in other countries but in India, Courts have not allowed recovery without notice for the reason that the principles of natural justice demand that 'justice not only be done but appear to have been done'. The theory basically states that there is nothing that the noticee can say that would alter the liability. After all, section 75(12) only relies on taxpayers' own admission of liability in Form GSTR-1 which has remained undischarged in Form GSTR-3B or where taxes are discharged belatedly through Form GSTR-3B or directly via Form DRC-03 and interest thereon remain unpaid.

Instruction No. 01/2022-GST dated 7 Jan 2022 has clarified that not every instance where liability as per Form GSTR-1 is not discharged in Form

GSTR-3B implies an 'undisputed arrear' as there are many *bona fide* reasons when these two returns may have a mismatch. When Revenue attempts to treat any liability as 'undisputed arrears', taxpayers must be prompt in placing on record that the apparent liability is not, in fact, payable and put forth the reasons to show that it is either not payable or disputed. Omission to respond to communication received in terms of this Instruction can be treated as admission, implied in taxpayer's silence.

1.18 Rule of Law stands tall in GST

The Proper Officer has to protect the interests of the Revenue in the manner ~~ordained~~ intended by the Parliament and Parliament has chosen to rely on taxpayer to carry out self-assessment. Therefore, Revenue is left to adhere to this mandate in law and proceed strictly within the terms of specific provisions whereby Parliament authorizes revenue for intrusion coupled with burden to prove taxpayer's self-assessment to be incorrect. As to what is correct determination of tax liability is not left to one's opinion but to application of the GST law.

Rules of law is where all concerned – taxpayer and tax administrator – must permit the law to take centre stage and not their own convictions or compulsions. GST was introduced in 2017 but it stands tall as it is mounted on the shoulders of legislations as old as 1872, be it Indian Contract Act to explain the first principles of supply for consideration or Transfer of Property Act to explain the methodology of effecting transfer involving immovable properties and then judicial authorities under Easements Act, Indian Registration Act, Limitation Act will illuminate our understanding of the underlying first principles that will guide the treatment to be extended in GST. Awareness and application of first principles from Sale of Goods Act, Indian Partnership Act, Indian Evidence Act and Administrative law recognize the boundaries of what ought to be done and what not, when it comes to 'protecting interests of revenue'.

Section 160(2) needs special mention where Parliament saves orders traceable to invalid notices or proceedings that have been acted upon by taxpayer and even omitted to question their validity at the earliest opportunity, from the vice of being *void ab initio* and be struck down. The principle of acquiescence is baked into this provision where taxpayer's failure to question validity of any notice, order, or communication, preserves what possibly could have become an invalid proceeding.

1.19 Principles of Natural Justice

'Fair play in action' is the underlying promise in a rule-of-law State and this is referred to in Common Law as principles of natural justice (although stated earlier in a different context where it was necessary), it be reiterated to the following:

- *Nemo judex in causa sua* which means, no person shall be a judge in his own cause; and
- *Audi alteram partem* which means, to hear the other Party.

It has been held in the case of *State of Orissa v. Dr (Ms) Binapani Dey & Ors. AIR 1967 SC 1267* that natural justice must be followed in every proceeding, whether judicial or administrative, where the authority is vested that can cause prejudice in the course of its exercise, even if this requirement is not super-added in the provision vesting such power.

It has been held in case of *Menaka Gandhi v. UoI AIR 1978 SC 597* that putting a party at notice is the *sine qua non* (mandatory) for any adjudicatory proceeding to ensure that justice is not only done but appears to have been done. And putting the party at notice does not mean putting forward a suspicion (a claim based on conjecture without any material to support) and allow the party to prove its innocence, in particular, certainly not in a tax regime that is founded on self-assessment which is made explicit in section 59. No provision of this law can operate in derogation of this liberty except to the extent saved by section 155 or any other Common Law principle.

Chapter 2
Inspection, Search and Seizure (Section 67)

2.1 Overview of the steps involved

Based on the provisions of law, given hereunder is an overview of steps involved that one may anticipate being carried out by departmental officers and discharge their statutory duties validly and in accordance with the requirements of law:

Step 1: Any officer may gather intelligence from sources within the law or from proceedings under the law such as scrutiny or audit or from third-party sources such as persons liable to maintain and disclose transaction-level data such as CBDT, Sub-registrar, RERA etc. which justifies inspection of the premise of (i) taxable person or (ii) other person(s).

Step 2: The officer would then file a note to the Joint Commissioner (or higher rank Officer) for the grant of authorization in Form GST INS-01 along with details of intelligence gathered. If the Joint Commissioner is satisfied after examining the material on record, then for such 'reasons to believe' as are taken on record, issue authorization to inspect specified premises of the 'taxable person' or 'any (other) person'. Form GST INS-01 must be specific as to the following whether:

- Only inspection to be carried out – name of location and specific articles to be inspected. Part A or B of Form GST INS-01 is referred; or
- Both inspection and search to be carried out – suspicion about (i) goods liable to confiscation or (ii) documents, books or things, found to be 'secreted' at specified location and duly noted on file. Part C of Form GST INS-01 is referred.

Step 3: Based on Form GST INS-01, the Authorized Officer (not below the rank of Assistant Commissioner of State or Senior Intelligence Officer of Centre) is then authorized to conduct inspection or inspection-cum-search of the identified location along with witnesses (panchas). Lady Officer to be

present in case premise is a residence or such other place likely to be occupied by ladies and children.

Step 4: The Authorized Officers, on arriving at the location, must disclose their identity and offer their personal search before commencement of inspection after establishing correctness of location authorized in Form GST INS-01 with location reached by officers and obtain signature of the party on Form GST INS-01 as to these matters.

Step 5: Conduct inspection limited to the areas connected with the 'reasons to believe' specified in Form GST INS-01 without carrying away anything, not even copies of books of accounts. Inspection is permitted under section 67(1) of the CGST Act. Inspection should not be aggressive but polite and courteous. Proceedings to be commenced and concluded during working hours unless extended (discussed later).

Step 6: When 'reasons to believe' (in Form GST INS-01) are validated during inspection to the satisfaction of the Authorized Officer (conducting the inspection), he should seek further authorization in Part C (of Form GST INS-01) to extend 'inspection' to 'search' as permitted under section 67(2) of the CGST Act. It is this satisfaction that (with the 'reasons to believe') is open to judicial scrutiny later and must be carefully complied to establish this 'suspicion' that incriminating articles 'secreted' have been searched. Only the Authorized Officer (conducting the search) enjoys jurisdiction to proceed with the exercise of the power of search conferred in law.

Step 7: Search under section 67(2) must be limited to (i) goods liable for confiscation or (ii) documents, books or things, that are 'secreted' (see later discussion) at location which was inspected and searched.

Step 8: During search, if the party is not cooperating and access is denied, section 67(4) of the CGST Act permits breaking open *"any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed"*. If access can be secured from the party, these additional powers should not be exercised.

Step 9: Once 'inspection' is extended to 'search' and there is a discovery of 'secreted articles' then the Authorized Officer proceeds with 'seizure' either (i) to commence confiscation proceedings in respect of goods liable to confiscation were found to be secreted or (ii) further investigation of documents, books or things were found to be secreted. Once the Officers exit from the location, the authorization granted in Form GST INS-01 stands

extinguished or exhausted. Section 67 of the CGST Act contemplates continuous proceedings until completion. Inspection is conducted during working hours but, when the Authorized Officer is satisfied that the premises is to be 'searched' then proceedings must not be stopped or interrupted. Care must be taken to ensure that proceedings are swiftly completed. Since 'spot recovery' is not admissible, it is important that any voluntary payment in Form DRC-03 is suitably documented by Form DRC-01A (issued under section 74(5) on the Common Portal). Any involuntary payment via Form DRC-03 without Form DRC-01A leaves option open to claim refund by filing Form GST RFD-01 on Common Portal under 'other payments'.

Step 10: Order of seizure in Form GST INS-02 must be drawn up containing (i) purpose of proceedings under section 67(2) based on Form GST INS-01 (ii) details of search conducted such as date, location, persons present (both sides), duration of search and details of discovery (iii) description of discovery – suspected, secreted or accidental – including condition in which they were found and effort involved to extricate, cooperation received / not received, process of breakage carried out (physical or electronic) (iv) details of witnesses (panchas) and time of conclusion.

Step 11: Order of prohibition in Form GST INS-03 must be drawn up where goods liable for confiscation are (i) not in a position practically to be seized or (ii) lying with third parties lawfully such as job-worker or customer on-approval or warehouse-keeper, etc.

Step 12: Order of provisional release in Form GST INS-04 is permitted under rule 140 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules), upon execution of a bond for the value of the goods in Form GST INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable, where request is made for such release and Authorized Officer is satisfied that provisional release will not prejudicially affect the proceedings. Provisional release does not sanction appropriation by party by sale, consumption, or any other mode, but mere holding of custody with undertaking to produce the said articles whenever directed.

Step 13: Certain articles may also be disposed *ad interim* in Form GST INS-05 proceedings under rule141; such articles are specified in *Notification No.: 27/2018-Central Tax dated 13 Jun 2018* (discussed in detail later).

Step 14: Based on the discovery during search proceedings, Officers must bring it to a conclusion either by (i) demanding tax/credit by issuing a show cause notice under section 74 or (ii) dropping proceedings. Seized articles, which are not relied upon for issue of show cause notice, must be returned within thirty (30) days of the show cause notice and where no show cause notice is issued, within six (6) months (may be extended by further six months) from date of order of seizure.

2.2 Pre-condition to any intrusive action

There are very fundamental and essential 'ingredients' that must be shown to exist prior to grant of authorization by Joint Commissioner to any other officer, who will be empowered to discharge duties as the 'Authorized Officer' for inspection of the premises or goods. Inspection under section 67 is pre-authorized by *Circular No. 3/3/2017-GST dated 5 Jul 2017*.

Reference may be had to rule 139 where Form GST INS-01 is prescribed as the format of authorization to be granted by Joint Commissioner. This format shows the specific 'contraventions' potentially involved, that support the request for authorization.

Reasons to believe, must be about 'contraventions' listed in section 67 that apply to 'taxable person':

- 'suppressed' any transaction of supply;
- 'suppressed' stock of goods;
- claimed input tax credit 'in excess' of entitlement; and
- indulged in 'contravention to evade payment of tax'.

While allegations made later (in notice) may vary but cannot be used to raise demands in respect of matters that are not traceable to the above 'contraventions'. This is to avoid 'full scale audit' being conducted after securing authorization for one or other contravention involving 'evasion of tax'.

And those that apply to 'any person' being (i) transporter or (ii) warehouse-keeper, are:

- transporting goods which have escaped payment of tax;
- storing goods which have escaped payment of tax;

- keeping accounts or keeping goods, in a manner as is likely to cause evasion of tax payable.

A close review of the 'ingredients' in each of the instances reveals the onerous task on Joint Commissioner to give careful consideration to the facts and suspicion presented before issuing authorization to reach a conclusion that invoking powers under section 67 is justified. Mere possibility that evasion may be involved without material facts taken on record, does not provide sufficient basis for the grant of authorization. Jurisprudence is well developed in the context of other laws such as Income-tax, Customs and Sales tax, to state that:

- suspicion is not sufficient to warrant inspection or search;
- authorization cannot be granted without 'reasons to believe' that fall within those listed in the statute;
- authorization granted must be based on material taken on record;
- file must contain notes as the nature of examination (of those records), deliberation carried out and the satisfaction reached that forms the 'reasons to believe'; and
- that except by undertaking this exercise alone which is justified and warranted, no other proceeding under the law will be equally efficacious in the facts and circumstances of the case.

2.3 Preparations prior to inspection

Owing to the significant scope available and the inherent urgency involved in these proceedings, it is possible that actions by Proper Officer and Authorized Officer are open to be called in question on the ground of administrative excess, if any, as a first step but in later proceedings (discussed later) or may even be taken up for judicial review by Courts.

CBIC Instruction *F.No.GST/INV/DGOV Reference/20-21 dated 2 Feb 2021* may be referred to for detailed guidance about preparations and process of conducting inspection-cum-search under section 67 of the CGST Act which would *mutatis mutandis* apply to proceedings under State/UTGST Act. Some important aspects are:

- Personal search of officers be permitted before inspection;

- Acknowledgment of party on Form GST INS-01 be collected and retained on file;
- Presence of lady Officer if women and children present on location;
- Witnesses (panchas) must be independent persons;
- Spot recovery not permissible.
- Videography to be considered in case of sensitive premises.

Instructions No. 01/2020-21 issued by CBIC in this regard are contained in Annexure.

2.4 Inspection versus Search

Care must be taken in choosing the sub-section under which this authorization is given. Authorization is not a *carte blanche* permission i.e., not a full authority to inspect or search any place or premises because (i) inspection and (ii) search, are two different processes in this law.

'Inspection' is permitted under section 67(1) where 'reasons to believe' must be that of the Joint Commissioner (or higher rank Officer) who will then grant authorization to 'any other' Officer as the Authorized Officer to inspect the specific premises listed in Form GST INS-01. Inspection does not allow opening up cupboards and so on; that is permitted only in search proceedings.

'Search' is permitted under section 67(2) where 'new or additional' reasons to believe must be or become available to the Joint Commissioner (or higher rank Officer) to 'further authorize' the (same or another) Officer who was granted authorization under section 67(1) himself to act as Authorized Officer and conduct search-cum-seizure proceedings under section 67(2).

Considering that seizure is permitted in only search proceedings and not in inspection proceedings, it is important to discuss whether 'reasons to believe' that provide reasons to grant authorization for 'inspection' are sufficient to conduct 'search-cum-seizure' or 'new or additional' reasons are required. Further, it is important to consider whether these new or additional reasons to authorize search-cum-seizure must also pre-exist at the time of grant of authorisation in Form GST INS-01 or whether they can be discovered during inspection to support extending the proceedings to 'search-cum-seizure'.

While 'evasion of tax' is the touchstone for 'inspection', articles being 'secreted' is the bedrock of 'search-cum-seizure'. If both these dissimilar reasons are known prior to inspection, then comprehensive Form GST INS-01 may be issued in Part-A or Part-B to conduct inspection as well as in Part-C to conduct search-cum-seizure. If not, then Form GST INS-01 in Part-A or Part-B will only be issued to conduct inspection and any discovery during inspection will then be relied upon to support reasons to issue another Form GST INS-01 in Part-C to proceed with search-cum-seizure proceedings.

On a careful reading of the two sub-sections, it appears that:

- Reasons to believe that are sufficient just to 'inspect' the place(s) of business justifies grant of authorization and this satisfaction must be ensured by Joint Commissioner (or higher rank Officer). Based on this authorization, 'any other' Officer as the Authorized Officer will execute the authorization and report back (no format prescribed) of outcome of such inspection proceedings;
- New or additional reasons to believe must become available or be already available which are validated by discovery during inspection, to support a further authorization to 'search' all or any of the place(s) of business that were inspected and this satisfaction must also be ensured by the Joint Commissioner (or higher rank Officer).

Questions that arise are whether these 'two instances' where reasons to believe were established should pre-exist before Form GST INS-01 or only one may exist before Form GST INS-01 and another emerge out of discovery in inspection. Perusal of Form GST INS-01 brings out the following aspects:

- Form GST INS-01 is the form of authorization for 'inspection' and is also the prescribed form for authorization of 'search-cum-seizure';
- Form GST INS-01 Part A – taxable person and place(s) to be inspected; or
- Form GST INS-01 Part B – other persons and place(s) to be inspected; or
- Form GST INS-01 Part C – specified location believed to contain secreted articles;
- Authorization:
    - To another Authorized Officer to 'inspect'; or

- To another Authorized Officer to 'search' and if offending articles (goods or documents) are found to 'seize' and produce before Joint Commissioner.

From the above it is clear that there are 'two instances' where all these reasons to believe must pre-exist at the time of authorization. As such, Form GST INS-01 must be for 'inspection only' or 'inspection and search' when it is granted to the Authorized Officer(s) and there can be two Forms GST INS-01, where one is for 'inspection only' (based on certain reasons to believe) granted to one Officer and another for 'search' (based on additional reasons to believe) granted to same or different Officer.

It is reasonable to expect 'combined authorization' for being more practical and for this reason, careful examination of these pre-existing reasons is essential to determine whether they were sufficient to support only inspection (but not search) or both inspection as well as search-cum-seizure. It may be noted that any discovery during inspection (suspected to have already been in the knowledge of Joint Commissioner at the time of grant of authorization in Form GST INS-01) cannot be used to automatically extend inspection to search-cum-seizure proceedings if these new or additional reasons are not placed on record in Form GST INS-01 that is issued. This is key to challenge the validity of proceedings under section 67.

Search-cum-seizure is limited to 'secreted articles', that too, comprising only of the following:

- Goods liable to confiscation are 'secreted'; or
- Documents or books or things, useful or relevant to any proceedings are 'secreted' in any place.

It is therefore important to consider whether proceedings are carried out 'under section 67(1) or under section 67(2)'. The scope and limitations of what can and cannot be done under each sub-section are laid down in those provisions and vastly differ from each other.

It is very interesting to note that the format in Form GST INS-01, inspection + search + seizure is in one Form and the selection of each Part in this Form must be carefully examined as to whether the grant of authorization is for one (inspection), two (search and seizure) or all three aspects in a manner that it will stand up to judicial scrutiny later. Considering the intricate nature of these processes that any slip in this 3-step procedure will taint the entire

proceedings and legitimate discovery could be annulled due to the process adopted being tainted and bad in law.

2.5 Multiple authorizations for same investigation

- Considering that Form GST INS-01 is issued at a certain time 'x' duly supported by reason to believe that such an 'inspection' is justified, it must be examined carefully if (although not impossible, but it may not be possible in some cases), that at that same time 'x', 'new or additional' reasons to believe that 'search-cum-seizure' is also justified have been available for Joint Commissioner to grant a comprehensive authorization; or
- After carrying out inspection, certain new material may be discovered that was unknown at the time of grant of authorization which may now justify extending the proceedings to search-cum-seizure, but the authorization originally granted being insufficient to proceed with these extended proceedings, it will render the search-cum-seizure illegal as the necessary (new or additional) reasons to believe cannot be an 'after discovery' (that is, discovery after search was conducted),

In all such instances, it is to be examined if the Authorized Officer (i) either concluded the inspection and after making necessary notes of additional matters or (ii) continued the inspection without exiting the premises but requested the Joint Commissioner to issue another authorization in INS1-Part C to lawfully extend the proceedings to cover inspection-and-search-cum-seizure to ensure due compliance with procedures established in the law.

There is no bar in law that only one (1) authorization in Form GST INS-01 must be granted in respect of a given investigation. As such, there may be multiple Form GST INS1s issued and all reasons to believe and the material in support thereof be duly noted on the file when they are called in question in an application under section 67(10) or in judicial review by Courts, if any.

2.6 Challenge to 'reasons to believe'

'Reasons to believe' is less than 'evidence in possession' (as referred to in section 64) but more than 'suspicion' about potential tax evasion. Reasons to believe, need not be disclosed to the taxpayer in the first instance, but must be the outcome of objective examination of facts that arouse suspicion and after further consideration leads to compelling conclusion that become

'reasons to believe' sufficient to invoke exceptional powers under section 67 to gather additional evidence about the evasion of tax. For these reasons, powers under section 67 cannot be exercised routinely even if there is suspicion but one that can be regarded as 'reasons to believe' that evasion of tax has occurred. Care must be taken that (i) existence (ii) validity (iii) sufficiency and (iv) documentation of relevant material on files, in support of these reasons to believe will be called into question in the application to be filed under section 67(10) before replying to the show cause notice (discussed later).

While 'reasons to believe' are not disclosed at the outset, they are necessarily open for taxpayer to call them into question in later proceedings to challenge the validity of the exercise of these exceptional powers in section 67. Even a court may call and examine the file noting that show the material taken on record and the consideration given to them, where the exercise of these exceptional powers are questioned by a taxpayer. While a court will not substitute its own wisdom with that of the Proper Officer (in granting authorization), absence of reasons or existence of frivolous and implausible reasons, will certainly rob proceedings of lawful jurisdiction.

'Justiciable' is whether the issue can be challenged before a Court. Whether there were 'reasons to believe' that were reasonable or were whimsical is justiciable. Most recently, the apex court has laid down nine principles in *PDIT v. Laljibhai Kanjibhai Mandalia* [CA 4081/2022] after surveying various earlier authorities in this regard.

Just because something was discovered during inspection, does not justify grant of authorization to conduct search under section 67. It must be demonstrated that prior to discovery in inspection and on the basis of material placed on record (before inspection), 'reasons to believe' can be supported. Reasons cannot be discovered after exercising these powers. Reasons must pre-exist and pre-date the grant of authorization.

Where 'reasons to believe' justify only inspection, search is not permissible and where 'reasons to believe' justify both inspection and search then, combined authorization is permissible. If, however, reasons to believe cannot support search proceedings (without including anything discovered in inspection), authorization granted to search will be rendered unlawful and consequently taint the discovery.

Improper proceedings must be questioned by taxpayer under section 160(2) at the earliest point of time in the proceedings but if the nature of inspection and the measures that follow any discovery, do not allow an opportunity for taxpayer to question or acquiesce to the inspection proceedings then the taxpayer is free to question the existence of 'reason to believe' at any time later – up to the time of responding to show cause notice issued demanding tax under section 74 or imposing penalty under section 130.

Question about valid 'reasons to believe' touches 'jurisdiction' exercised by Joint Commissioner and all consequent actions taken by Authorized Officer in executing the authorization granted. Where there was no jurisdiction to authorize inspection, inspection will be illegal and jurisdiction to authorize inspection but not inspection-cum-search and consequent seizure, will also be illegal and any discovery from such illegal seizure will also be tainted.

Authorization issued to inspect under section 67, being extraordinary power, must be exercised with great restraint and principles of natural justice that cannot be followed 'prior' to exercise of powers in law, can be adhered to 'subsequently' as held in the case of Menaka *Gandhi v. UoI AIR 1978 SC 547*. If Joint Commissioner is unable to justify 'reasons to believe, when called into question, then no demand will sustain out of such tainted proceedings. Without jurisdiction, even if there are any legitimate dues, it cannot be exacted. In case of *Nazir Ahmad v. King Emperor AIR 1936 PC 253*, the Privy Council has stated that *"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."*

Tainted discovery cannot be acted upon, and GST allows a getaway by taxpayers' consent in section 160(2), but illegality by way of 'lack of jurisdiction' is so profound that not even section 160(2) can come to the rescue of the demand consequent to such tainted discovery. But the apex court has held in the case of *Pooran Mal Etc. v. DIIT, AIR 1974 SC 348* that evidence collected in illegally conducted search can still be relied upon and used in demand and prosecution proceedings; it is, therefore, imperative that taxpayer attends to only valid proceedings and objects lawfully where proceedings are illegal.

2.7 Circumstances when articles 'are secreted'

Secreted articles (not defined in the Act but referred in this discussion) refer to the two types of articles, namely, (i) goods liable to confiscation and (ii)

documents, books, or things, when they are 'secreted' and discovered to be so during search, are liable to 'seizure'. In other words, unless these articles 'are secreted', they cannot be seized. The word 'secreted' not only qualifies 'documents, books or things' but also qualifies 'goods liable to confiscation' as they are placed between two 'commas' in section 67(2) and this aspect is important to appreciate that articles liable to seizure are only those that 'are secreted' and if they are 'not secreted' then, the Authorized Officer will be unable to seize them within the scope of this provision.

'Secreted' does not merely refer to the fact that certain articles were lying around but refers to those that were lying around coupled with the use of some 'device' that makes their detection impossible. And except by removing or uncovering, by employing any means of uncovering such device (designed to conceal their existence), that they would go undetected. Device for concealment or to secret these articles may not only be an undisclosed place of storage but also a method of storage that makes them undetectable. Such methods may be by employing a manner of describing them on a document that would be misleading and successful in concealing but also deliberate mis-presentation to appear to be something else including with the use of electronic methods like passwords, cloud storage, ghost files/folders, etc. and anything else that ensures their concealment.

'Secreted' includes articles openly kept but in an undisclosed location in a manner that make them go undetected, which would tantamount to being secreted. Secreted also includes non-accounting of goods where the concealment comes not from the physical location / storage but from the omission to document their possession (receipt and holding of unaccounted stocks for making supplies).

Further, goods (capital goods and inventory) that are not liable to confiscation cannot be subject to seizure and as well as all other articles (being documents, books, or things) that are not useful or relevant in any proceedings. This is a subjective test and that too, to be determined during the rush of search proceedings. But the Authorized Officer's use of discretion in identifying secreted articles to the place under seizure must be palpable, as this exercise of determination (not mere exercise of discretion) will need to stand judicial scrutiny later.

In this Handbook:

- "secreted articles" means goods and other articles which are secreted in place of search;
- "seized articles" means secreted articles which comprise of (i) goods liable to confiscation and (ii) documents, books or things and are seized by Authorized Officer against GST INS-02; and
- "offending articles" means goods liable to confiscation, whether seized or not, including conveyance used in committing offence under the CGST Act.

2.8 Non-secreted circumstances

Seizure of 'secreted articles' under section 67(2) is legally permissible only if the said articles are 'secreted'. In other words, if the said articles are not secreted, then proceedings under section 67 are questionable in later proceedings. In this regard, section 35(6) prescribes as under:

"(6) ……...where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been ***supplied*** *by such person and the provisions of section 73 or 74 or section 74A, as the case may be, shall, mutatis mutandis, apply for determination of such tax."*

Where articles are not secreted, revenue that can be demanded will only be limited to tax, interest and penalty under section 122. Confiscation or fine-in-lieu of confiscation under section 130(2) will require such goods (i) to be secreted and (ii) detected in search proceedings (or in-transit interception) and these proceedings will be in addition to demand of tax, interest, and penalty under section 122. The term 'secreted' extends not only to holding stock of goods at a secret location or but also to any omission to account for goods although they may not be physically secreted or even omitting to register the place where goods are stocked (as additional place of business).

Where additional places of business are not added to the registration and business may continue at such places in plain view and openly along with display of GSTIN of the principal place of business, it would *prima facie* neither be a case coming within section 67(2) nor be liable to confiscation

under any of the five (5) clauses to section 130(1). However, it is often seen that such additional places of business are 'treated' to be a secreted location along with all goods in such premises. As long as, no 'device' is shown to be employed that would make their detection impossible and conduct of taxpayer is in the usual course of business, it does not amount to being 'secreted' to attract the consequences of seizure and confiscation.

2.9 Exhausted by exercise

This is a very important aspect to note that authorization to inspect or search, as the case may be, stands 'exhausted by exercise'. In other words, authorization is specific to:

- Specific officer (no sub-delegation allowed)
- At specified places (precise and exhaustive, not vague and inclusive)
- Within specified time to carry out (day and date stated on it)

Authorization must be acted upon by the Authorized Officer and inspection carried out at the specified places and in accordance with the extant instructions of CBIC / State Commissioner with respect to due process for carrying out inspection and/or search, within the specified time permitted or not at all and once it has been executed and duly conducted and Authorized Officer exits the said premises, the given authorization expires. Authorization may expire even after lapse of time (specified therein) by which the inspection could not be conducted for any reason. But one authorization granted cannot be used for multiple visits to the premises. It is for this reason that 'multiple Form GST INS-01' may be granted so that there is no failure in following 'due process' established by law.

If inspection was carried out in the first instance, unless 'new or additional' reasons to extend inspection to search proceedings pre-existed at the time of first authorization and duly recorded on the files to be able to issue Part-C of Form GST INS-01, routine extension of inspection to conduct search-cum-seizure will be illegal for want of jurisdiction and hence, unauthorized. officers are welcome to secure another authorization by way of a second (and subsequent) Form GST INS-01s in order to validly extend the inspection into search proceedings.

2.10 No 'follow up' correspondence

Once an authorization granted in one specific Form GST INS-01 is exhausted by exercise of the powers (discussed above) and the Authorized Officers exit the premises, there is no provision in law to issue 'endorsement' or 'letters' calling for explanation from the taxable person (or other person) on any matter by way of "follow up correspondence". There is no provision in the CGST Act authorizing such interaction, whether by correspondence or in-person. Authorized Officer is free to issue summons under section 70 but that requires careful consideration of the nature of interaction to be undertaken (more on that discussed later) as summons cannot be issued in a routine manner.

Even if the taxable person were to reply to any such 'endorsement', the same is open to retraction or challenge at the time of adjudication. Section 160(2) must be taken into consideration, while responding to such endorsement. It is important to verify whether proceedings under section 67 have been discharged strictly in accordance with law and any attempt to extend the 'terms of reference' of inspection beyond 'evasion of tax' into routine matters akin to "reassessment" or "audit" are not permitted under this section.

The authorized officer must interpret the information contained in the seized articles (documents, books or things) and reach certain conclusions relevant for the investigation, without depending on the inputs or explanation from taxable person (or other person). If the seized articles are insufficient to reach any definitive finding of leakage of revenue, the Authorized Officer must conclude the proceedings and refer the case and the extent of evidence, if any, gathered in these proceedings to be taken up for detailed audit under section 65. But the proceedings under section 67 must be brought to a conclusion. Investigation under section 67 cannot continue indefinitely as there is a time limit in section 67(7) of CGST Act.

2.11 Seizure is to 'secure and identify'

All secreted articles (discussed above) are liable for seizure. Seizure is to 'take physical custody' of the said documents or goods or things. Seizure is a necessary requirement to 'secure' the specific 'goods and documents, books, or things' and to 'identify' them in later proceedings. Seizure does not imply 'transfer of property' in those goods and documents, books, or things (as that would be 'confiscation', discussed later). Seizure is a good test as to whether inspection under section 67(1) led to the discovery of any incriminating

material for certain on 'new or additional' reasons to believe that justified search proceedings. If there is no seizure, inspection will be complete, and no further proceeding remains to be carried out under section 67.

Rule 139 has prescribed Form GST INS-02 as the format of order of seizure and from a careful reading of this form, it is clear that there is no requirement that the seized articles must be carried away by the Authorized Officer. After seizure, they may be handed back for safekeeping. But it is important that Form GST INS-02 must be drawn-up and two witnesses (or panchas) must attest Form GST INS-02. It is important to note that Form GST INS-02 is the basis to identify what was discovered in search proceedings and to refer in later proceedings or for their return eventually. After all, the Revenue is not interested in taking the responsibility of safe keeping of seized articles except to the extent they are relevant in raising demand in accordance with law.

2.12 Seizure not to 'prevent access' by taxpayer

Seizure is not to stop the taxpayer from accessing goods and documents, books, or things, but (as discussed earlier) to 'secure and identify' articles that vindicate the 'new' reasons to believe for invoking section 67(2) and to support demands to be raised in due course. After notice is issued or other interests of Revenue are secured, the seized articles must be returned to the person from whom they were seized and not retained by the Revenue indefinitely.

Interests of revenue being limited to collection of tax, interest, and penalty, where taxpayers come forward to either discharge or otherwise assure the interests of Revenue, the seized articles may be returned provisionally or finally (more on this in later discussions). But the principle to appreciate is that *preventing access by taxpayer to seized articles is not the objective of seizure*.

2.13 Seizure of 'Cash'

Seizure being merely a requirement of the law to 'secure and identify' the documents, books or things (discussed earlier), it would not be remarkable if Authorized Officers were to seize 'cash' discovered during search proceedings.

It is important to note that even cash must be 'secreted' to qualify for seizure but, more importantly, cash is not 'goods liable to confiscation' under section

130(1) but are 'things' which are considered *"useful or relevant"* by the Authorized Officer to carrying out *"any further proceedings"*. What, therefore, can be the 'use or relevance' of cash to be seized?

There is popular, mysterious, and erroneous understanding that 'cash' is illicit if discovered in search proceedings. Officers tend to seize cash without even ascertaining to whom it belongs to. There is no presumption in law, that cash seized from premises searched belongs to the person searched, unlike in similar proceedings under The Narcotic Drugs and Psychotropic Substances Act, 1985 or Prevention of Money Laundering Act, 2002. Presumption in section 144 is limited to 'documents'.

'Cash' seizure does not directly point to proceeds from unaccounted sales. That would have been easy but the Legislative wisdom is that (i) 'evasion of tax' is a must for proceedings under section 67 to be with jurisdiction and lawful and (ii) no presumption flows in favour of the Revenue, especially, when cash may be treated to be 'things' and not 'consideration from supply'. After all, 'things' seized can only be if they are *"useful or relevant"* for the Authorized Officer in carrying out *"any further proceedings"*.

Where 'cash' is sought to be seized and is properly accounted and reported in Form GST INS-02, the inspected persons need not be anxious that the cash may not be returned. It is also not permissible for this cash to be appropriated towards recovery (discussed later) of any liability determined without issuing a notice. And seized articles are liable to be returned (discussed later).

2.14 Seizure process and report

Seizure is a legal process of establishing the identity of the goods or documents or things (discussed earlier). Further, seizure must be conducted in the presence of two witnesses (or panchas) whose presence establishes *bona fides* of the proceedings including protocol for search and manner of discovery of secreted articles (more on this later). Absence of panchas, taints the seizure and panchas cannot be officers of Revenue or persons themselves whose premises is subject to search proceedings.

Form GST INS-02 lays down the 'identity' of seized articles. But care must be taken to note tha*t '(i) goods liable to confiscation which are secreted and detected during search and (ii) documents, books or things which are also secreted and detected during search, can only seized'*. These articles are

referred to in this discussion as 'secreted articles'. It is also important to ensure that all the articles included in Form GST INS-02 must meet this standard to be subject to seizure. Section 67(2) not only confers authority to seize but also specifies the limits to the exercise of this authority.

Articles liable to confiscation are those that are listed in section 130(1) (refer Chapter-3 on confiscation) and to the extent of proceedings under section 67 refer to **'***outward or inward supplies carried out (i) in contravention of law (ii) with intent to evade payment of tax'*. It must be noted that here too, there are specific 'ingredients' listed for the article to be 'liable to confiscation'. However, the fact that 'articles discovered' were secreted and discovered during search proceedings, it raises a presumption against the taxpayer and justifies 'seizure'.

'Presumption' is about likely evasion, which is a 'rebuttable presumption' and cannot be an 'assumption' to justify any irreversible action by Revenue such as 'final confiscation' or 'disposal' without issuing show cause notice. Rebuttable presumption is also subject to the process of determination of questions of fact in accordance with due process of law by adjudication (and along with appellate remedies). That is, whether the goods were liable to confiscation, whether the secreted articles were secreted, in what manner were they secreted, what were the means employed to discover the secreted articles, could those secreted articles have been found without the use of means employed by the Authorized Officer, etc. are all matters which are open to examination in appeal or judicial review and cannot be admitted with finality based on the opinion of the authorized officers. There are several questions of facts to be established here, namely:

- Contravention of law; and
- Intent to evade payment of tax.

Irreversible actions such as final confiscation or disposal is not permitted straightaway because if the taxpayer were to be successful in rebutting this presumption (in appellate proceedings later), the benefit of this effort in successfully proving that search-cum-seizure ought not to have been carried out at all, would be rendered a mere 'relief on paper' if (wrongfully) seized articles are not available to be restored to the taxpayer due to premature confiscation or disposal. Since seizure secures the interests of Revenue only, seizure is permitted by law at the end of search proceedings so that the rest of the due process of law is allowed to run its course before any final

action may be taken up. Care must be taken to read through Form GST INS-02 to examine if all requirements of law (discussed above) are present and complied with in these proceedings.

2.15 Right to 'seal or break'

Where the offending articles are suspected to be stored in a locked-room or in any almirah, electronic devices, box or receptacle, and access, if, not provided by person-in-charge of premises being searched then and only then (to be duly recorded in proceedings on file) that the Authorized Officer may:

- 'seal' the door of any premises so as to prevent access by the taxpayer after access is gained to secreted articles in such premises liable for seizure; or
- 'break open' the almirah, electronic device, box or receptacle so as to gain access and seize.

As per section 67(4), immovable property cannot be seized. Immovable property can be sealed, and the authorized officer can 'break' open the door to such premises where access to such premises is denied. Procedures under the Code of Criminal Procedures, 1973 (hereinafter referred to as "Cr.PC") which is now replaced with Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") are made applicable under section 67(10) where pre-trial disclosure of all documents and records of the investigative process is mandated with Commissioner being designated to exercise the powers vested with Magistrate under section 165(5) of Cr.PC and now section 185(5) of BNSS (discussed in detail later).

Movable property such as almirah, box or receptacle may be broken open to gain access. Clearly, this authority must only be exercised if there is non-cooperation by taxpayer in allowing access to Authorized Officer. It is not possible for the authorized officer to vacate the premises and return on another occasion to gain access as the authorization to inspect would have expired on exiting from premises.

Breaking open to gain access (to secreted articles) must be understood suitably when considering electronic records as they are not to be physically broken but employing a commensurate technological method that is akin to breaking physically and to gain access to the contents. Again, this step is permitted here only if the taxpayer does not provide access or share passwords, etc. To this end, suitable technical experts may be involved with

search party or taxpayer's staff may be directed to break open password(s) or other security protocols to access records suspected to be secreted in electronic devices.

2.16 Prohibition orders

As seizure not only refers to the process of 'taking away' secreted articles, it is possible that instead of seizing them, the authorized officer may place those offending articles under an order of prohibition in Form GST INS-03 which is akin to order of seizure in Form GST INS-02 but served on third party.

In both, legal ownership remains with the taxpayer and physical custody too may be left with taxpayer. But in prohibition, physical custody is always with taxpayer. Therefore, prohibition is generally with respect of secreted articles in custody of an innocent third-party such as warehouse-keeper or common carrier or customer holding goods-on-approval or job-worker holding goods (capital goods or inputs) for job-work or other holder-in-trust. Reference may be had to the terms 'owner or custodian' in rule 139(4). Seizure may also be made from the person not being the taxpayer against whom cause-of-action lies for contravention of the law.

2.17 Provisional release

Conclusion of search proceedings is a prerequisite for provisional release because after search proceedings are concluded, Form GST INS-02 will be issued containing list of seized articles. It is to secure access to (but not use of) such seized articles; the taxpayer may apply for provisional release under section 67(6). Provisional release is against own assurance that the seized goods will be produced when called for by the Authorized Officer. As such, taxpayer cannot use (consume or dispose) seized goods provisionally released and be in a position to produce them before the authorized officer. No format is prescribed for seeking provisional release, taxpayers may submit a plain-paper request in writing for provisional release along with execution of bond for the value of goods in Form GST INS-04 and furnishing of a security in the form of bank guarantee equivalent to the amount of tax, interest, and penalty. Application for provisional release applies even to 'cash', if the same has been seized as 'things' discovered in search proceedings.

Considering that the interest of Revenue is to collect tax, interest and penalty including penalty by way of confiscation, it is permissible for the authorized officer to 'provisionally' release seized goods under section 67(6). There is hardly any reason for the authorized officer to turn down an application for provisional release. And this shows clearly that seizure is to 'secure and identify' details of secreted articles and not a form of recovery of liability under the Act. Where suitable security is offered (to safeguard interests of Revenue), there is no ostensible reason to refuse provisional release. Rule 140 brings out the following 'primary requirements' for provisional release of the seized goods:

- Execution of bond for the value of goods in Form GST INS-04
- Furnishing security in the form of bank guarantee for the amount of tax, interest and penalty applicable.

If these primary requirements are not complied, then the seized articles continue to remain under order of seizure in Form GST INS-02 or order of prohibition in Form GST INS-03. Form GST INS-04 brings out these 'additional requirement' applicable to seized goods which are conditions-subsequent that must be pre-agreed in order to secure provisional release, namely:

- Seized goods to be produced when called for by Authorized Officer; or
- Security given may be encashed in the event of failure by consumption or disposal so as not to be able to produce the same when called for by Authorized Officer.

From the above, it is evident that provisional release does not allow the taxpayer to continue the business with seized goods (especially capital goods and inventory) as they continue to be under the control of the Authorized Officer, even though, physically available with taxpayer.

The taxpayer (or other person from whose custody seizure has been made) is encouraged to make an application 'in writing' to the authorized officer to provisionally release the seized goods upon execution of bond and furnishing of security. It is also important to note that once provisional release is permitted and if the said goods are not collected within one month by the taxpayer, the provisions of rule 141 (Entry 17 to Notification No. 27/2018-*Central Tax* dated 13th June 2018) will be attracted, whereby those goods can be disposed-off. However, seized documents, books or things shall be

retained by the officer only for so long as he may consider necessary for the examination and for inquiry or proceedings under the CGST Act.

Leaving custody with Authorized Officer involves responsibility of adequate care and protection over those articles. However, the Authorized Officer, retaining custody of goods liable to confiscation, may be required to ensure adequate care and protection until (i) show cause notice is issued for their confiscation and (ii) taxpayer has opted in writing to pay redemption fine (discussed later) in lieu of confiscation.

Retaining other seized articles – documents, books, or things – will not involve any significant burden to revenue as there is no requirement for any unusual amount of care for their safe-keeping. However, taxpayer may still request for their release so as to deny any non-essential retention of private records after the purposes for which they were seized have been served and the copies of 'documents' seized may be collected from Authorized Officer where a plain-paper application is made under section 67(5) including taking extracts of those documents.

2.18 Omission to seize

There is no mandate that all secreted articles must be seized although it is uncommon that some of the secreted articles may be omitted from Form GST INS-02 or Form GST INS-03. But articles that are not secreted (discussed earlier) cannot be seized and this would be a significant aspect later in questioning of jurisdiction of seizure proceedings and if offending articles (discussed later under 'confiscation') are omitted from being seized, it may impair confiscation proceedings. Whether such omission will be fatal to those proceedings or not is a different matter (discussed later) but, seizure being a factual position where tax authorities need to 'secure and identify' secreted articles, Form GST INS-02 must contain only those articles that are offending albeit in the realm of suspicion but not those that do not bear any suspicion. Merely to exert undue influence, non-secreted articles, or articles unconnected with the proceedings may be placed under seizure but this would be illegal and will taint the integrity of these proceedings. For example, inspection of job-workers premises cannot result in seizure of moulds and dies issued by other principals. Capital goods belonging to job-worker cannot be seized if capital goods are not in any way involved in the suspected offence.

2.19 Seizure NOT a form of 'recovery'

Section 79 provides wide powers of recovery including but not limited to disposal of (movable and immovable) property of taxpayer-in-default and such property need not be involved in the offence in any way. While recovery is allowed in respect of all properties of the taxpayer-in-default, seizure must be limited to offending articles that are suspected to be involved in the contravention of law.

As stated earlier, immovable property can never be seized under section 67 nor can movable property, that are not involved in the contravention of law. When these cannot be seized, they cannot even be included in confiscation proceedings.

2.20 Articles of special nature and special circumstances

The Government may notify 'class of goods' which must be disposed off immediately after seizure. As discussed earlier, seizure is not a final determination of all questions of fact and law but the start of those proceedings. Section 67(8) empowers the Government to authorize Authorized Officer to 'dispose-off' certain class of goods as are notified by the Government and requires a careful consideration of the nature of such goods, namely:

- Perishable or hazardous nature of goods;
- Depreciable goods;
- Constraints of storage space; or
- Any other relevant consideration.

The Government is authorized to notify such goods and those that are notified must meet the criteria in law and in order to notify them, such goods must meet any of the criteria listed above.

When goods that are notified are involved in any search proceedings, the authorized officer is required to dispose-off such goods, 'as soon as may be', after issuing Form GST INS-02 even without allowing provisional release in Form GST INS-04. This seems like an extreme measure as it frustrates all fruits of litigation that may ensue to taxpayer. But then, the nature of goods being such that retaining them under seizure may impair the realization of

any value from those goods. It is a delicate balance that the Authorized Officer has to strike between taking up speedy disposal of proceedings or losing any realizable value.

Rule 141 selects one out of the above four classes of goods listed as perishable or hazardous nature which are seized and permits taxable person to pay lower of (i) market price of said goods or (ii) tax, interest and penalty that 'may' become applicable on the said goods and on payment of said amount, such goods involved may be released. The authorized officer is required to pass an order in Form GST INS-05 demanding the said amount. Failure to pay this amount after it is determined vide Form GST INS-05 will authorize disposal of said goods by the Authorized Officer and apply the proceeds towards the liability of the taxpayer that 'may' arise on conclusion of adjudication (and appellate) proceedings.

Considering that these are extreme powers conferred on Authorized Officer, the same must be exercised judiciously and with care and when goods involved are notified under section 67(8), all parties involved must be aware of the extraneous nature of proceedings that could ensue. It is important to note that cooperation extended during search-cum-seizure proceedings can escalate into a demand in Form GST INS-05 if the goods seized are those listed in *Notification No. 27/2018-Central Tax dated 13 Jun 2018.*

Articles not listed in the said notification cannot be subject to Form GST INS-05 proceedings and must be entertained under section 67(6) to be released provisionally against Form GST INS-04. In other words, if the goods listed in said notification are involved in seizure proceedings, care must be taken to verify that soon after Form GST INS-02 is issued, application is quickly submitted requesting provisional release in Form GST INS-04.

While there is no requirement as to the time by when orders in Form GST INS-05 must be passed or that option for provisional release must necessarily be rejected, if taxpayer is willing to execute bond and furnish security, even goods covered by this notification are to be released. There is no provision that compels the authorized officer to bypass provisional release in Form GST INS-04 to a willing taxpayer and go ahead to pass orders in Form GST INS-05. Further, when provisional release is ordered in Form GST INS-04, the taxpayer must document his willingness to take custody not later than one month to save from the rigours of orders in Form GST INS-05. Refer Entry 17 in this notification which applies to non-perishable goods too,

which have been ordered for provisional release but left uncollected with Authorized Officer.

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

Notification No.27/2018 – Central Tax

New Delhi, the 13th June, 2018

G.S.R….(E).- In exercise of the powers conferred by sub-section (8) of section 67 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government hereby notifies the goods or the class of goods (hereinafter referred to as the said goods) mentioned in the Schedule below, which shall, as soon as may be after its seizure under sub-section (2) of section 67 of the said Act, be disposed of by the proper officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods.

Schedule

(1) Salt and hygroscopic substances
(2) Raw (wet and salted) hides and skins
(3) Newspapers and periodicals
(4) Menthol, Camphor, Saffron
(5) Re-fills for ball-point pens
(6) Lighter fuel, including lighters with gas, not having arrangement for refilling
(7) Cells, batteries and rechargeable batteries
(8) Petroleum Products
(9) Dangerous drugs and psychotropic substances
(10) Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
(11) Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
(12) Fireworks
(13) Red Sander
(14) Sandalwood
(15) All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
(16) All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.
(17) 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.

[F. No. 349/58/2017 – GST (Pt.)]

(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

2.21 Seizure of electronic records

While section 67(2) specifies *"documents, books or things are secreted"* may be seized, section 145 provides that *"micro films, facsimile copies of documents and computer printouts"* are to be regarded as "documents", in terms of Information Technology Act, 2000 read with Evidence Act, 1872.

""document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purposes of recording that matter.

Illustrations

A writing is a document;

Words printed, lithographed or photographed are documents;

A map or plan is a document;

An inscription on a metal plate or stone is a document;

A caricature is a document."

""electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche."

4. Legal recognition of electronic records. – Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied is such information or matter is–

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference."

These provisions read together with section 144 makes "electronic documents" not only admissible in seizure proceedings under section 67(2) but also there is a presumption raised as to the reliability of the contents of such electronic documents when they are (i) produced by any person (ii) seized from the customer of any person and (iii) have been received from any place outside India, in any proceedings under CGST Act or any other law.

2.22 Show cause notice

After the anxiety around inspection and search have ended, demand for tax, interest and penalty requires that provisions of section 74 read with section 122 and / or section 130 must follow. Detailed discussion about show cause notice is not included here (refer ICAI handbook on 'show cause notice' for detailed discussion) but what is relevant in the context of section 67 is that show cause notice imposing penalty in respect of offending articles must be issued under section 74 (and 76) and not under section 73. However, from Financial Year 2024-25 onwards, this shall be dealt in accordance with section 74A, which does not distinguish between fraud and non-fraud cases.

This show cause notice not only requires all the special circumstances under section 74 to be alleged and evidence adduced to discharge burden of proof but also the special ingredients necessary to support the allegation under section 122 and / or section 130 to be brought home.

The taxpayer is not liable to prove his innocence, even if provisional release in Form GST INS-04 is secured or payment is made under proceedings in Form GST INS-05. The presumption about offending articles is a rebuttable presumption and a closer look at the list of offending articles highlights the approach taxpayer has to follow in responding to the show cause notice. As stated earlier, secreted articles refer to:

- Goods liable to confiscation which were 'secreted'; or
- Documents or books or things, useful or relevant to any proceedings which were 'secreted' in any place.

It is important to note that goods liable to confiscation involve allegation of offence against taxpayer and discussion under section 130 may be referred. Suffice to mention that the 'burden of proof' rests on Revenue although proceedings under section 67 may have been initiated based on 'reasons to believe'. Reasons to believe that existed prior to authorization of inspection may not always be confirmed after inspection to justify 'new' reasons to believe that seizure is necessary so as to initiate confiscation in respect of taxable goods included in the list of seized articles.

While there may have been sufficient reasons to believe for authorization in Form GST INS-01 to be granted by Joint Commissioner (or superior officer), that was examined (and recorded on the file) by Joint Commissioner, it is not beyond challenge in adjudication proceedings and unless found to be

satisfactory, even legitimate demands will be tainted and fail as malicious inspection will be illegal and *void ab initio*. Failure to raise objections as to the legitimacy of Form GST INS-01 proceedings, carries with it the risk of acquiescence under section 160(2) as questions about the legality of any notice must be raised at the earliest opportunity and without this question being satisfactorily resolved, entertaining such notices (passively by replying on merits) procures validity to such notice and belated realization cannot be agitated later in appeal or judicial review after having acquiesced already.

As regards documents, books or things secreted, it is important to refer to section 67(3) where the ones considered 'useful or relevant' in search proceedings must be included in Form GST INS-02 or be the ones that are submitted later to Revenue authorities (discussed later as 'spot seizure'). All those documents, books or things that are 'not relied upon' in the show cause notice are required to be returned to taxpayer within 30 days from date of notice. The relevance of such documents, books or things, depends on (i) extent of reliance placed on them in the notice (ii) extent of evidentiary value they carry in relation to the allegations in the notice and (iii) approach followed by taxpayer in responding to the allegation in the notice. As such, taxpayer should not rush to address questions of merits even when a show cause notice is issued since GST is a self-assessment-based tax under section 59 and except for input tax credit under section 155, burden of proof in respect of all other demands for tax or penalty under section 122 and / or section 130 remains on revenue.

The taxpayer must be allowed all the safeguards available in section 75 and that would be available only if the show cause notice were issued under sections 73 or 74 or 74A . For this reason, it is clear that show cause notice cannot be directly issued under sections 122-130 as only the requirement that opportunity of hearing be granted is contained in section 122-130 but none of the safeguards such as section 75(7) or section 75(10) are available in section 122-130.

It is important to note that amendment to rule 142(1A), by replacing 'shall' with 'may', alters the requirement to undertake pre-notice consultations in all cases. Pre-notice consultations are mandatory in all cases in view of the mandate in sections 73(5) and 74(5). However, in cases involving fictitious supplies and credit racketeering, mandate in rule 142(1A) operated as a bar against proceeding with notice to persons involved in these cases. With the relaxation of the requirements in the rule, the Revenue is able to proceed

with issuing notices to offenders, denying them the defence of omission to undertake pre-notice consultations. In all other cases, even when they qualify for notices to be issued under section 74, pre-notice consultations are mandatory as it flows from a large number of decisions which recognized the Government's position in the National Litigation Policy that efforts will be made to resolve potential disputes by engaging in such consultations. Omission to follow pre-notice consultations have resulted in notices being quashed and parties relegated to pre-notice stage to undertake necessary consultations.

Where a notice is issued under section 73, it amounts to admission by the Authorized Officer that nothing in the nature of 'evasion of tax' has been unearthed in the proceedings under section 67. Where there is admission of non-evasion, proceedings under section 67 must be concluded and not continued to raise demands on routine matters which are left to the Proper Officer under sections 61 or 65 to take up. Just because some material is stumbled upon relating to, say, error in computation of credit reversal or doubts about applicability of exemption, etc. that does not permit the Authorized Officer to travel beyond the four corners of section 67(1)(a) against the taxable person or section 67(1)(b) against other person, to issue demands. That would also be lacking jurisdiction. Inspection is an exceptional power which cannot be exercised to carry out routine verification of compliance. Information so gathered may be passed on to Proper Officer for necessary action in accordance with law.

2.23 Release of seized articles

After show cause notice is issued, all seized articles which are not relied upon for issue of such SCN, are to be released to taxpayer within thirty days from date of show cause notice as per section 67(3) and where show cause notice is not issued, within six months from date of Form GST INS-02 as per section 67(7)

Where the inquiry cannot be concluded within the time permitted, extension may be sought by the Authorized Officer for a further period not exceeding six months. There is no requirement that the entire duration allowed for extension must be allowed at once. But failure to complete inquiry within twelve months will result in frustration of the entire proceedings. The taxpayer is free to object to reasons for (seeking and grant of) extension or fatal delay in concluding proceedings, in an application under section 67(1)

and it will be open to challenge in later proceedings. Indefinite extensions are not permitted in GST.

Therefore, all proceedings initiated under section 67(1) in Form GST INS-01 and proceeded under section 67(2) resulting in seizure in Form GST INS-02 or prohibition in Form GST INS-03, must conclude in any of the following ways:

- show cause notice under section 74 read with section 122 and / or 130; or
- release of seized articles within 6 months from date of Form GST INS-02/ Form GST INS-03.

Payment in Form GST INS-05 does not authorize conclusion to proceedings under section 67. It is only an emergency provision to protect the goods and the interests of Revenue in case of perishable or hazardous articles. Notice for payment of tax, interest and penalty must still be issued in these cases and amount collected being available for appropriation against dues finally determined.

2.24 Matters arising from inspection

Inspection is permitted only in respect of matters that give rise to 'evasion of tax'. Routine matters of compliance cannot be entertained in proceedings under section 67. This is a very important issue to take note of, that is, inspection must give rise to:

- **'**suppression of stock or supplies' with intent to evade payment of tax, that is, goods available in stock on-premises without invoice or invoices available but not goods. Mismatch in description of goods between invoice and physical stock is not a new deviation but a variant of the above two deviations; or
- input tax credit claimed beyond 'entitlement', that is, when there is a complete bar on claiming input tax credit, yet it is claimed; or
- any other 'contravention' designed to 'evade tax'.

Form GST INS-01 is issued based on 'reasons to believe' that offending articles (described earlier) may be present at a specified premises and inspection is necessary to uncover the potential offence attracting confiscation under section 130(1). Care must be taken to establish the specific instances (discussed later) from section 130(1) are noted on the file

and in Form GST INS-01 to enforce the authority to place such articles under seizure. Seizure of articles that do not satisfy the ingredients of section 130(1) must be avoided and if they are seized inadvertently, then the same must be properly released back to custody of the person-in-charge of the premises.

2.25 Review of routine matters not in inspection

Not every instance of non-payment of tax can be treated as 'evasion of tax'. There could be *bona fide* reasons for claim of exclusion from tax or exemption from tax. Under Central Excise, *Circular No. 1053/2/2017-CX dated 10 Mar 2017* states at Para 3.4 that demands involving 'interpretation' where the taxpayer has adopted a more advantageous interpretation, does not necessarily tantamount to 'evasion of tax'. In fact, in GST, there are numerous instances where contradictory decisions have been rendered by Courts and if the taxpayer adopts one and Revenue canvasses the other, it would not come within the ambit of section 67 and therefore, notice under section 74 would be inappropriate.

Refer the earlier discussion which states that notice under section 73 at the end of proceedings under section 67 is incompatible because notice is issued under section 74 in fraud cases involving evasion of tax. When a notice is issued under section 73, it implies that matters are (i) routine or (ii) Revenue is canvassing another interpretation; neither of these are compatible with proceedings under section 67. This may be due to regular habit that where evasion is not detected, routine matters are taken up and notices issued. Taxpayers who take comfort in the fact that relief is available under section 75(2) in respect of notices issued under section 74 on routine matters by the authorized officers, should note that this relief under section 75(2) implies that entire demand is liable to be dropped since it amounts to admission of non-evasion by Authorized Officer. This larger relief will become available provided it is urged by the taxpayer in adjudication or appellate proceedings.

However, from Financial Year 2024-25 onwards, this shall be dealt in accordance with section 74A, which does not distinguish between fraud and non-fraud cases.

Routine matters would include:

- Classification and applicability of exemption;

- Valuation adjustments (inclusions / exclusion);
- Admissibility (and matching) of input tax credit, blocked credits and reversal computation;
- Filing of returns including late fee and penalty.

While these areas stated to be 'routine' in nature can also be involved in cases involving 'evasion of tax', 'every non-payment of tax does not amount to evasion'; this acts as a protection against authorized officer exceeding the authorization to conduct audit as defined in section 2(13) and include demands in notices issued. That notice is issued under 73 *ipse dixit* points to a misapplication of powers under section 67. There are instances where the reasons for inspection are proved wrong, and yet the authorized officer proceeds to issue notice for matters not involving evasion of tax.

With a disclaimer that evasion may include these but these by themselves are matters not involving 'evasion' of tax to be raised in notices issued by the authorized officer without the peril of dismissal if the taxpayer raises objections at the earliest opportunity and carries the same without entering defence on merits:

Input tax credit:

- mismatch of Form 2A with Form 3B (since 2017-18);
- mismatch of Form 2B with Form 3B (since 2022-23, from 1 Oct 2022);
- section 16(1) "not used in furtherance of business";
- section 16(4) "for time-barring of credits";
- section 17(2) reversal in case of "non-business use";
- section 17(5) of "blocked credits";
- reversal computations rules 40, 42, 43 and 44.

Interest:

- unpaid arrears or arrears discharged belatedly (interest on 'gross tax');
- tax paid in belated returns (interest on 'net tax');
- debit notes issued (interest on 'gross tax');
- payments made via Form DRC-03 (interest on 'gross tax').

Output tax:

- RCM under section 9(3) and under section 9(4) up to 12 Oct 2017;
- deemed supplies omitted by multiple -GSTIN taxpayers;
- tax on staff recoveries (credited to expense account);
- tax on other income (appearing in P&L); and
- all valuation adjustments especially discounts and subsidy.

Demands on these matters where the taxpayer responds on merits 'without prejudice' to objections on jurisdiction are likely to be saved if the Adjudicating or Appellate Authority were to reach a finding for Revenue. Notwithstanding rule 121, a taxpayer must be sure of the validity of proceedings before proceeding to respond on merits. After all, without jurisdiction, nothing remains in the said proceedings. This is a matter of opinion and each taxpayer may take counselling before embarking on the long journey ahead once a notice is issued in these proceedings (discussed later and format appended).

While the issues raised in notice may not be exactly aligned with the 'reasons to believe' that inspection is warranted, they also cannot travel so far away from these reasons as to be an 'after discovery'. That would cause trespass of proceedings under section 67 into the territory occupied by section 65. And to say that after all, it is to protect interests of Revenue, is not acceptable for the reasons stated in *Nazir Ahmed v. King Emperor (ibid)*. Allegations in the notice must touch 'reasons to believe' contained in file noting for grant of authorization. And to know this, safeguards for taxpayer are provided in section 67(10) where application as applicable under section 165(5) of Cr.PC, now section 185(5) of BNSS, is made applicable to proceedings under this law (discussed later).

2.26 Intelligence needed to invoke exceptional powers

Taxpayers must be mindful that intelligence (about 'evasion of tax') cannot be collected from taxpayer by issuing summons or other non-descript letters and correspondence. Taxpayer is well within the rights, remedies and safeguards provided in the law to object any communication as to its validity by calling the same into question (suggested format appended). It is important to be aware that intelligence must be gathered by Revenue to secure necessary authorization and invoke exceptional powers in section 67.

Suspicion is neither sufficient nor is doubt about possible evasion. Intelligence must be gathered before invoking the powers under this section and not after invoking these powers. Lack of intelligence (about 'evasion of tax') amounts to misapplication of these exceptional powers and a 'fishing expedition' which demands active disobedience, must be duly and politely communicated.

In order that one's rights are not trampled upon, it is necessary that such person 'demands justice' from the person alleged to be trampling upon those rights. Law anticipates that in case of any inadvertent trampling of others' rights, a demand for justice, will alert the person and bring about speedy resolution. Often taxpayers anticipate misapplication of law and rush to High Courts. To demand justice is a duty before alleging denial of justice. In *CIT v. Scindia Steam Navigation Co. Ltd.* (1962) 1 SCR 788, the apex court has held *"…it is well settled that no mandamus will be issued unless the applicant had made a distinct demand on the appropriate authorities for the very relief which he seeks to enforce by mandamus and that had been refused."*.

Now a question may arise as to how would the Revenue gather this intelligence without conducting detailed examination of accounts and records of the taxpayer? When the Legislature has stated that GST is a self-assessment-based tax regime, all other provisions of the law must be interpreted and administered in harmony with section 59 and not in derogation of it. Therefore, 'intelligence gathering' must be in a non-intrusive manner. Hence the traditional approach of calling for books of accounts and verification of bills, vouchers and contracts, is no longer acceptable in GST and analytical and insightful approach must be followed by the Revenue. The Parliament believes that it is possible now in this connected world where nearly no transaction escapes without leaving an online trail that can be picked up to expose potential evasion. Use of data analytics, validation with third-party data and other methods are available for Revenue to gather necessary intelligence before reaching out to the taxpayer, exercising these exceptional powers. Taxpayers must understand the boundaries of 'active disobedience' that is required in law against exercise of non-existence powers albeit in the interests of Revenue.

Following are few illustrative instances that fit the requirements of evasion under section 67(1)(a):

- Suppression of stock or supplies – where taxpayer with multiple GSTINs has declared nil turnover in Table - 5D of Form GSTR-9C or where auditors have reported a major fire accident in the factory involving destruction of stocks but Form GSTR-3B in the given months' reports show NIL turnover and credit reversal;
- Credit claimed beyond entitlement – where a taxpayer engaged in RREP projects has discharged output tax at 5% or a travel agent paying tax at 5%, but Table - 6A in their Form GSTR-9 shows claim of input tax credit;
- Contravention to evade tax – where a taxpayer has filed Form GSTR-3B for entire year with NIL turnover but TDS credits appear on the Common Portal against this taxpayer's GSTIN.

While it is not possible to list a very elaborate number of illustrations it is suffice to state that proceedings under section 67 cannot trespass into routine matters of 'verification of correctness' of compliances as expressed in section 2(13) for purposes of audit under section 65.

It is also important to note that during inspection, even if other routine matters come to light, Authorized Officer is barred from expanding scope of proceedings unless these matters (i) tantamount to evasion of tax and (ii) contained within the authorization granted. In these early years since introduction of GST, it is noted that investigations initiated are not concluded when evasion of tax is not detected but expanded to cover routine matters (discussed earlier) in order to have some finding and issue some notice. Equally so, taxpayers fail to object to 'inquiry' becoming an 'enquiry' into these routine areas by failing to question the validity of proceedings that are otherwise invalid for want of jurisdiction. This is referred as 'acquiescence' by taxpayer.

2.27 Matters NOT arising from inspection

Inspection under section 67 is not a proceeding to conduct 'routine inspection' as can be seen from the pre-condition of 'reasons to believe' that must exist in order to invoke this section and seek authorization from Joint Commissioner (or higher rank Officer) to grant the use of exceptional powers of inspection and search-cum-seizure by Authorized Officer.

Therefore, matters that are generally impermissible to be taken up by the Authorized Officer in exercise of powers under section 67 would be verification of:

- eligibility to input tax credit such as Form GSTR-2A versus Form GSTR-3B or blocked credits;
- classification and exemption conditions involving interpretation;
- inclusions / exclusions compliance in valuation; and
- other deviations that may exist such as interest or late fee.

These are matters to be inquired into in proceedings under section 65 and not under section 67. Inspection under section 67 does not authorize complete reassessment of tax liability that has been self-assessed by the taxpayer.

2.28 Duty of Magistrate to be exercised by Commissioner

Not only the taxable person is entitled to collect (i) copies of seized articles under section 67(5) or (ii) secure their release provisionally under section 67(6), but he must be furnished with copies of all (i) authorizations granted in the said proceedings (ii) copies of file noting and (iii) any other related records, which form the basis of the show cause notice in terms of a short but significant reference made in section 67(10). This sub-section refers to section 165 of Cr.PC and the Commissioner is substituted for Magistrate under Cr.PC. As required in Cr.PC, the taxpayer who is served with a notice under section 74, 76 or 130, at the end of proceedings under section 67 must consider making an application to the 'Commissioner' to discharge duties cast on a Magistrate under section 165(5) of Cr.PC. This application cannot be denied merely because show cause notice is already issued. After all, in terms of CBIC Circular No. 31/05/2018-GST *dated 9 Feb 2018 amended by Circular No. 169/01/2022-GST dated 12 Mar 2022 (and further amended by Circular 239/33/2024-GST dated 4 Dec 2024), in amended Para-6* and 7 states that Officers of Audit and Intelligence Commissionerate are permitted to carry out their audit or investigations and issue show cause notice. But for purposes of adjudication, the file and the notice must be transferred to Proper Officer (subject to pecuniary limits) in the Executive Commissionerate to hear the noticee and adjudicate. In keeping with this requirement, documents must be kept ready in order to prevent any allegation of denial of

justice in adjudication proceedings. This provision is for taxpayer safeguard and to ensure justice is done. Decisions of the apex court that are relevant are:

(i) State of Rajasthan v. Rahman AIR 1960 SC 210 which held that:

- *"The power of search given under this chapter is incidental to the conduct of investigation the police officer is authorized by law to make. Under section 165 four conditions are imposed : (i) the police officer must have reasonable ground for believing that anything necessary for the purposes of an investigation of an offence cannot, in his opinion, be obtained otherwise than by making a search, without undue delay; (ii) he should record in writing is to be made; (iii) be must conduct the search, if practicable, in person; and (iv) if it is not practicable to make the search himself, he must record in writing the reasons for not himself making the search and shall authorize a subordinate officer to make the search after specifying in writing the place to be searched, and, so far as possible, the thing for which search is to be made, as search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power."*

(ii) *RS Jhaver & Ors AIR 1968 SC 59* which held that:

- *"We are therefore of opinion that safeguards provided in section165 also apply to searches made under sub-section (2). These safeguards are – (i) the empowered officer must have reasonable grounds for believing that anything necessary for the purpose of recovery of tax may be found in any place within the jurisdiction, (ii) he must be of the opinion that such thing cannot be otherwise got without undue delay, (iii) he* (sic) *must record in writing the grounds of his belief, and (iv) he must specify in writing so far as possible the thing for which search is to be made. After he has done these things, he can make the search. These safeguards, which in our opinion apply (to, sic) searches under sub-section (2) also clearly show that the power to search under sub-section (2) is not arbitrary."*

2.29 Special procedure 1 – 'spot seizure' of documents produced

During the course of any proceeding before the Authorized Officer, where any accounts, registers or documents ('records') have been produced and he

has 'reasons to believe' that taxpayer has evaded or attempting to evade payment of tax, such Authorized Officer may seize such records 'on the spot' and record reasons in writing and issue acknowledgement.

Records so seized are not to be pre-authorized in Form GST INS-01 or seized in Form GST INS-02. This is a special procedure contained in section 67(11) of the CGST Act, where for certain 'reasons' to be recorded in writing (which must be carried on the file and would be subject to challenge in later proceedings) that those records are necessary to be immediately seized for purposes of inquiring into any past (or ongoing) evasion apparent from those records, such records may be immediately seized without any prior authorization and acknowledgement will be issued (akin to Form GST INS-02) due to the exceptional nature of the circumstances necessitating seizure of those records. Natural justice demands that these 'reasons' (for effecting such 'spot seizure') be disclosed at the time of seizure.

Records so seized may be retained without any time limit to return and may be relied upon for purposes of any proceedings under the Act. It is important to note that the expression 'prosecution' used in section 67(11) is not prosecution of offences under section 132. It is an expression of common English, which refers to the 'taking a course of action' and understood in the context of its usage. This is the correct legal expression for 'carrying out any appropriate proceeding' under the Act. When records so seized are relied upon in later proceedings where a show cause notice is issued, then those 'reasons' recorded in writing that evasion may have been resorted to, may be called into question. Taxpayer needs to be mindful that the authorized officer must document proceedings along with reasons on the file. Refer earlier discussions about reasons to believe and challenge that they will be exposed to for a reappreciation of the emphasis to the exercise of this emergency authority by Authorized Officer without any prior approval or oversight.

2.30 Special procedure 2 – 'test purchase' to check for invoices

Section 67(12) permits the Commissioner or any officer authorized (say, Specified Officer who is not the Authorized Officer conducting inspection), to pretend to be a customer and attempt to purchase goods or services or both from the business premises of a taxpayer only to check whether practice of issuing invoice is followed or not. In other words, while surprise nature of this 'test purchase' is another emergency power but one that cannot be exercised

by jurisdictional Proper Officer or any other Officer in a routine manner even if there is suspicion that supplies are being made without invoice being issued, unless specific authorization is issued by the Commissioner or any Officer delegated with the power to issue such authorization.

It is incumbent that Commissioner or any officer authorized, must authorize any Specified Officer to make such test purchase under section 67(12) of Central GST Act. While no format of this authorization is prescribed in the Rules (for the reason that it is not to be produced to the taxpayer at the time of making such purchase), it is certainly an authorization that must be recorded on the files and, if required, be produced in proceedings under section 122 or 125 or 130 initiated based on observations in such test purchase.

As discussed earlier, the taxpayer exposed to a non-compliance when test purchase is made under section 67(12), will call into question, authorization by Commissioner, failing which, the entire proceedings will be tainted and any legitimate discovery of non-compliance will not result in any action against the taxpayer. Without a format being prescribed, Form GST INS-01 will not apply but authorization on the file will need to exist and be produced in adjudication (or appellate) proceedings.

It is seen that taxpayer's word against the Specified Officer's word comes up for scrutiny in adjudication or appeal when penalty is levied. The taxpayer must issue tax invoice where supply is made. And where discussion at the time of making test purchase indicated intention to make a sale-on-approval, then no obligation to issue tax invoice arises. The taxpayer must be clear as to the discussions leading to the test purchase and reason for not issuing tax invoice in this instance when it is issued in all other instances.

2.31 Test purchase versus Sampling

Section 154 permits "drawing samples" by Commissioner or any authorized officer, of goods, for any purpose, such as verification of provisional assessment under section 60 or determination of classification by conducting tests and verify correctness of classification or to investigate any possible liability under section 63 or any other purpose.

The authority to 'draw samples' is not to be equated with the authority of 'test purchase' under section 67(12). Test purchase under section 67(12) is

exclusive to test one thing – whether invoice is being issued or not – which is not the purpose in section 154.

2.32 No power to question persons

There is nothing in section 67 that empowers 'questioning' persons present at the places of inspection or search. Power to question any person resides in section 70. Taxpayers must extend full cooperation and support in the discharge of duties by the Authorized Officer. Any objections regarding validity, purpose and manner of discharge of duties by Authorized Officer must not be raised during inspection if Form GST INS-01 has been shown by the Authorized Officer. Objections, if any, may be raised after issuance but before replying to notice issued on conclusion of these proceedings.

Questions posed and replies submitted may be retracted and doubted in later proceedings and the Authorized Officer will not be able to rely on such information secured. Section 67 as well as rule 139 state precious little by way of 'duties and responsibilities of persons' during inspection or search proceedings. Any requirement to question any person requires proceedings to be initiated under section 70 by issuing summons (discussed later).

2.33 Places NOT to be inspected

Access to 'place of business' under section 71 does not apply to inspection or search under section 67. That is, the places to be accessed under section 71 are limited to places of business of 'registered person' but section 67 travels beyond places of business of taxable person and extends to the places of transport or storage of goods or accounts or any other place are also permitted to be inspected, unlike section 71 (discussed later).

Places specified in Form GST INS-01 alone may be inspected. This authorization should not be vague like 'at Mumbai or in Maharashtra' or inclusive like 'all known places of business activity'. Authorized Officer will not travel beyond the places specified in Form GST INS-01 for the reason that inspection of unauthorized places renders any real discovery at such unauthorized places to be considered illegal and the inspection without jurisdiction if the same is objected in later proceedings [see discussion about section 67(10) application].

Time (date or dates) to inspect must also be specified in Form GST INS-01 and not issued without an 'end date' for it to be completed or expire (by lapse of date and time mentioned to commence and conclude inspection in Form

GST INS-01). Since authorization is exhausted by exercise or authorized officer exiting the place of inspection or even by lapse of time (date or dates) permitted, care must be taken to verify the actual date or dates of inspection to confirm the validity of inspection carried out.

2.34 Provisional attachment under section 83 (during section 67)

Attachment of property (including bank account), when interests of Revenue is at risk, is permitted under section 83 which include proceedings under section 67. On a careful consideration of the proceedings under section 67, it is clear that after Form GST INS-02 but before Form GST INS-04, there is a small time gap when 'interests of revenue' may be considered to be at risk. If offending articles have been seized then, there is no risk to the interests of Revenue as custody of the seized articles are available with the Revenue. If the offending articles have not been seized then, it implies that there are no offending goods liable to confiscation or available for seizure and confiscation under section 130. Here also, no risk to the interests of Revenue exists and no action under section 130 is possible.

Care must be taken to (i) examine the jurisdiction to invoke section 83 (ii) continued risk to the interests of Revenue that is not redressed by seizure and (iii) risk of flight (taxpayer absconding without discharging liability when the same is finally determined). Artificial, imaginary or improbable risks cannot form the basis for this apprehension and permit provisional attachment. Provisional attachment powers may appear to be invoked as a 'quasi' recovery measure but within the time limit (of one year) allowed under section 83(2), the existence of these risks must be such that they will not continue beyond this time limit.

Therefore, the only occasion where section 83 can be pressed into service in the context of section 67 (other provisions when section 83 can be invoked not discussed here) is to attach (i) movable and immovable property of the particular taxpayer or (ii) money in bank account of particular taxpayer, which could legitimately provide security to recover revenue. 'Secreted articles' which are liable to seizure under section 67(2) are not the same as 'property' which is open to provisional attachment under section 83.

Provisional attachment does not require or involve seizure. Any property of particular taxpayer may be provisionally attached, even if they are not offending articles. They may not even be secreted articles liable to seizure.

Non-offending articles such as capital goods, inventory and other property may be provisionally attached. Distinction between property that can be provisionally attached, and offending articles must be appreciated.

In this Handbook:

- The term "secreted articles" means goods and other articles which are secreted in place of search;
- The term "seized articles" means secreted articles which comprise of (i) goods liable to confiscation and (ii) documents, books etc. that are seized by Authorized Officer in Form GST INS-02; and
- The term "offending articles" means goods liable to confiscation, whether seized or not, including conveyance used in committing offence under the Act.

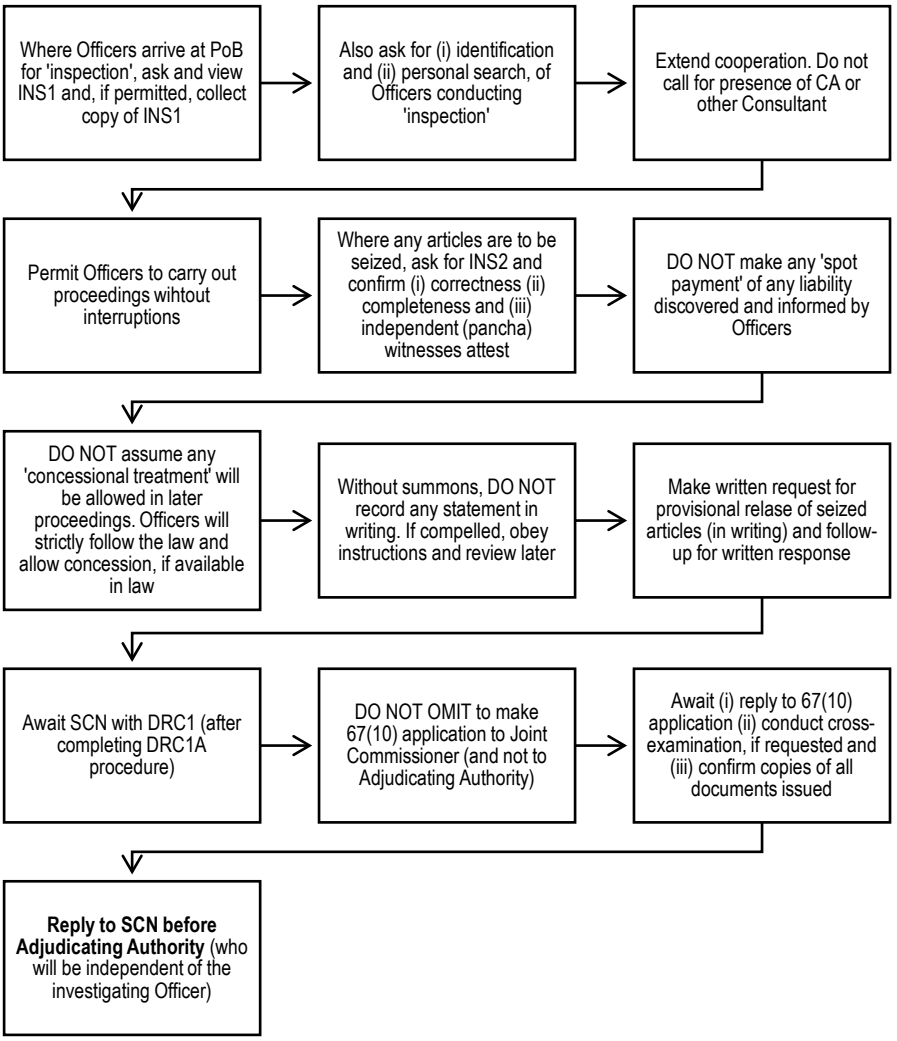
'Money' is neither goods / services in GST nor is it 'things secreted' to be considered offending articles. But money available in the bank may be accessed in recovery action when demand is confirmed. Provisional attachment under section 83, when proceedings under section 67 are in progress, will find legal support provided the 'risk to interests of Revenue' can be demonstrated (in writing recorded on the files contemporaneously).

The power of provisional attachment under section 83 is now available when (i) proceedings under sections 59 to 64 (Chapter XII) or sections 67 to 72 (Chapter XIV) or sections 73 to 84 (Chapter XV) have been "initiated" and (ii) there is risk of alienation of such property (belonging to taxable person and not family or relatives), in order to prejudice recoverability of revenue (after completion of due process as per law). Interestingly, proceedings under sections 65 and 66 (Chapter XIII) relating to audit and special audit, respectively, do not enjoy the facility of provisional attachment.

Provisional attachment does not result in transfer of property to Government. Provisional attachment must not continue beyond one year and property attached must be released on expiry of this time. By that time, proceedings must be concluded, and adjudication or appellate proceedings must have been set in motion.

2.35 Taxpayer's response

Based on experience under earlier laws and some new experience under GST law, following chart depicts the essential steps a taxpayer may consider in attending to proceedings under section 67:



2.36 Unfettered powers in Section 151

Section 151 amended vide Finance Act, 2021 w.e.f. 01.01.2022, which empowers Commissioner or any officer authorized by "an order" direct (i) any

person to furnish (ii) any information relating to (iii) any matter (iv) within such time (v) such form (vi) such manner, specified in said order. When serious matters involving 'evasion of tax' have been fettered with safeguards against (unintended) misapplication of exceptional powers by section 67 with oversight by Joint Commissioner superadded to ensure privilege of self-assessment by taxpayer in section 59 is not trammelled, matters for which power under section 151 can be invoked cannot overlap with section 67.

Except to state that power under section 151 cannot overlap with section 67 and that this special power cannot be exercised to inquire into 'evasion of tax', there is no guidance as to the purpose for which this section can be pressed into service. Taxpayer must ensure that the "order" said to be issued by Commissioner (and not by any other delegate of the Commissioner) must be demanded to learn of the six (6) aspects for which this power is conferred by Legislature. And any directions to comply with such directions must be strictly in accordance with the terms of such order. Where any administrative excess is noted from the contents of such order, the same is justiciable in a Court of law.

Taxpayer must ensure that powers under section 151 cannot enter into the domain of Proper Officer in Chapter XII, XIII or XIV of the Act for the reason that to assume overlap is permitted in law would imply that Legislature has enabled conflict of jurisdiction. And if Commissioner desires to exercise authority vested in any Proper Officer in those Chapters, then section 5(2) already permits Commissioner to do so, and section 151 would not still be required.

2.37 Misplaced understanding of Rule 56(18)

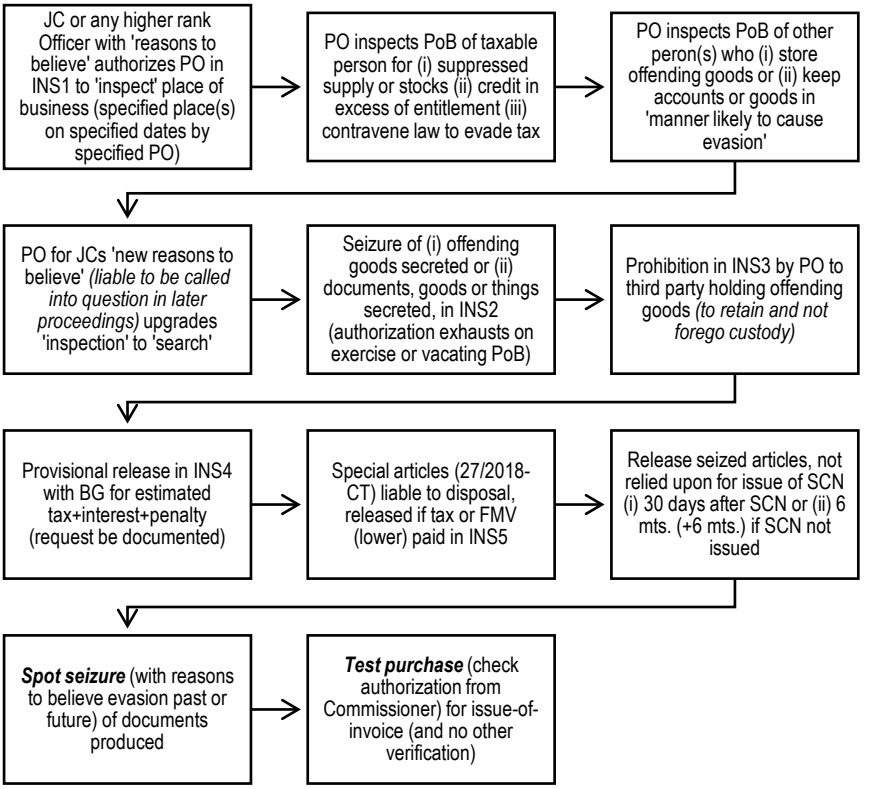
Another provision that is often cited to direct taxpayers to immediately produce books of accounts is rule 56(18). Unless any proceeding is shown to be authorized under Chapter XIII of the Act, 'calling for books of accounts' cannot be independently authorized by rule 56(18). Rules cannot operate in derogation of the Act. And when Proper Officer under Chapter XIII is vested with authority to call for books of accounts (and other records), such Officer will not need to draw power from rule 56(18). Authorized Officer under section 67(1) is empowered to inspect books of accounts or under section 67(2) is empowered to seize documents, books and things considered necessary, if secreted, or to issue summons under section 70 to call for specific records. It is unintelligible as to who might this rule 56(18) be

conferring authority to call for books of accounts. Any mandate in the Rules must show the provisions in the Act to which they are relate or fulfil the purposes. And since rule 56 resides in Chapter VII of the Rules, this mandate is traceable to section 65 of the Act.

Authority of Proper Officer calling for books of accounts, must be identified based on the provisions under which said Proper Officer is discharging duties. Proper Officer in Chapter XII can undertake scrutiny of returns or carry out best judgement determination of liability in exceptional instances and cannot call for 'complete set' of books of accounts of taxpayer (falling within their jurisdiction). Proper Officer in Chapter XIII can undertake audit of returns and does not need support of rule 56 to call for books. Proper Officer in Chapter XIV can undertake inspection and search-cum-seizure or issue summons to demand production of specific records, cannot call for 'complete set' of books of accounts of taxpayer (falling within their jurisdiction). Acquiescence to unauthorized proceedings is with prejudice taxpayer's rights, remedies and safeguards available in law.

2.38 Conclusion about Section 67

Steps to be followed during inspection and search leading to seizure must be taken note of to understand the 'powers and obligations' bestowed on the Authorized Officer as well as the 'rights and remedies' allowed to taxpayer. A quick overview is provided in the chart below:



Inspection is a very specific and emergency power as it contains various in-built safeguards in the form of prior authorization by Joint Commissioner (or higher rank Officer) for 'good and sufficient' reasons to believe and for other additional reasons emerging or validated after inspection to justify escalation of the proceedings from 'inspection to search'. Secreted articles discovered during search can only be seized.

Inspection is limited to transactions involving **'***suppression of stock or supplies' or 'availment of disentitled input tax credit' or 'other contravention with intent to evade tax'.* Search is an aggravated form of evasion where some device is employed by taxpayer to conceal the evasion. Exceptional misadventures demand exceptional powers. Exceptional powers need flexibility and section 67 allows flexibility but needs to be overseen by Joint Commissioner (or higher rank Officer). And proceedings initiated under section 67 must conclude with either 'no finding' or a show cause notice under section 74 (now 74A) read with section 130 (penalty under 122 may be in addition to it).

Chapter 3
Confiscation under Section 130

3.1 Overview of steps involved

Based on the provisions of law, given below is an overview of the steps involved that one may anticipate being carried out by departmental Officers and discharge their statutory duties validly and in accordance with the requirements of law:

Step 1: Seizure is a pre-requirement to confiscate. Articles that are provisionally released may also be confiscated. Establishing identity of the articles which are liable to confiscation by process of seizure (in section 67) is an important step in confiscation proceedings;

NOTE: With the amendments to section 129(6) vide Finance Act, 2021 (made effective from 1 Jan 2022), the power of confiscation under section 130 has been delineated and made inapplicable to proceeding under section 129 of CGST Act.

Step 2: Option for payment of redemption fine (i) must be granted and (ii) acceptance or rejection of this option by the party must be secured and documented;

Step 3: Order of confiscation must be passed specifying the monetary amount of the penalty adjudicated along with confiscation (to recover said penalty) or by demand for payment redemption fine adjudicated (where Party accepts option to pay fine-in-lieu of confiscation);

Step 4: Order of confiscation (where redemption fine is not accepted) must result in disposal and realization of proceeds to appropriate against the amount of penalty adjudicated;

Step 5: Redemption fine adjudicated but not paid authorises disposal of goods liable to confiscation after allowing three months' time before initiating recovery action.

3.2 Nature of confiscation

Confiscation is NOT an emergency proceeding unlike seizure after search of premises. Show cause notice must be issued before confiscation and in

order to issue such show cause notice, identity of offending articles must be clearly established. Any article may be seized but only offending articles (liable to confiscation) can be confiscated. Confiscation by mistake is *void ab initio* in law.

Confiscation will instantly, without any prior consent of taxpayer, result in transfer of ownership (of confiscated articles) in favour of Government. For this reason, confiscation should not be the first step in cases of suspected tax evasion. It is the last step because the burden of storage, care and disposal of seized articles (which are liable to confiscation) will fall on the Proper Officer acting on behalf of the Government.

Proceedings that affect the rights of taxpayers cannot be undertaken without following the principles of natural justice (discussed earlier) as laid down in the case of *State of Orissa v. Dr (Ms) Binapani Dey & Ors AIR 1967 SC 1269* and these instructive words have stood the test of time. For this reason, confiscation, including opportunity to pay fine-in-lieu of confiscation, cannot be determined without an adjudication order. In order to adjudicate and pass an order, it must be preceded by a show cause notice and when an adjudication order is involved, appellate remedies provided in the law cannot be by passed. Therefore, confiscation is the culmination of a due process that begins with seizure of goods liable for confiscation and ends with final order (adjudication or appeal) where questions of fact and law are finally determined and served on the taxpayer in Form GST APL -04.

Seized articles (discussed earlier) includes offending articles (taxable goods) and other articles (documents, books, or things). While all these can be seized, only offending articles can be confiscated.

3.3 Seizure MUST before confiscation

Goods (or conveyance) liable to confiscation must be physically available in order to initiate confiscation proceedings. If the custody of goods (or conveyance) is lost, then confiscation is not possible and when confiscation is not possible, no proceeding under section 130 is possible. **Confiscation is of (i) taxable goods and (ii) conveyance (involved in committing offence) which are "offending articles"** for purposes of confiscation proceedings under section 130. Fine-in-lieu of confiscation is on the person who opts not to forfeit the title to those offending goods.

Section 122 which appears to contain the causes-of-action which are also contained in section 130, do not overlap or cause any double jeopardy because penalty under section 122 is in respect of a person and confiscation under section 130 is in respect of the goods (or conveyance). Both are independent and simultaneously applicable provisions and ingredients necessary in each case are separate. As such, when a single offence that attracts both section 122 and 130 are established as per due process, then the consequences under both these sections can be imposed on the taxpayer.

When custody of offending articles is lost (for any reason) but the offence can be established as per due process, penalty under section 122 may be imposed but not confiscation under 130.

3.4 Offences attracting confiscation

Every instance of non-payment of tax, even under special circumstances of section 74 do not support confiscation under section 130. Seizure of offending articles having already been discussed, the next important aspect to note is the nature of 'offence' involving goods or conveyance. An offence is committed by a 'person' but the consequences under section 130 is against the 'offending goods' (goods or conveyance) involved in the offence as a burden that is imposed on the person, independent of that under section 122 or even 132. Following are the offences that attract confiscation under section 130:

Description	Intent to evade	Tax liability
(i) Supplies in contravention (out/in)	Yes	Not paid
(ii) Omits accounting stock of goods	-	Liable but not paid
(iii) Supplies without registration	-	Liable but not paid
(iv) Any contravention	Yes	Not paid
(v) Used conveyance to transport goods	Connected to any of the above	

From the above, it appears that this list encompasses many different situations. For example, if a person under misunderstanding about eligibility to exemption, adopts a *bona fide* and beneficial interpretation and such interpretation is later determined by a Court (even in some other case) to be

ineligible, then it does not come within the cause-of-action in clause (iii) of section 130(1). Any *bona fide* interpretation claimed by the taxable person must stand the test – whether a reasonable person would reach such a conclusion. Now, the question is whether Revenue has any remedy against such person to confiscate the goods (where physical custody of goods is not with the taxable person). Clearly 'no' because consequence under section 130 is 'against goods' which have already been supplied long ago and are no longer available to be confiscated. And when goods are no longer available to be confiscated, confiscation is not possible (discussed earlier).

As in all other cases, offence cases must be carefully reviewed if all 'ingredients' to attract the incidence of penalty are brought home in the investigation and then in the show cause notice.

3.5 Distinction between 'seizure' and 'confiscation'

It is important to note the distinction between these two seemingly similar activities which are legally polar opposites:

Description	Seizure	Confiscation
Authority for action	67(2)	130(1)
Pre-condition	Authorization by JC in INS1 Part C	Seizure under 67(2)
Object involved	Secreted articles	Offending articles
Result of action	Custody with Government	Title vests with Government
Exercise of authority	Exceptional and sudden exercise without adjudication	After issue of SCN and due adjudication
Appellate remedy	Not allowed	Allowed
Alternate remedy	Not allowed	Mandatory option to pay 'redemption fine'
Release of articles	On issuance of SCN or after 6 months from date of seizure	On payment of redemption fine
Rejection of alternate remedy by Taxpayer	Not applicable	Confiscation on finality of order of adjudication

3.6 Determination of 'liable' to confiscation, by process of adjudication

Determination that any goods are 'liable' for confiscation, is an irreversible step. Such determination is not a conclusion that can be reached privately in the mind of the Proper Officer. In order to be lawfully made, it requires the full extent of 'due process' of adjudication to be employed. In other words, a notice must be issued to the right person with the allegation supported by evidence that identified goods (consignment or conveyance) are liable to confiscation by showing how the ingredients listed in any of the clauses under section 130(1) are fulfilled.

Unlike section 129(1), where either the consignor or consignee or transporter, may come forward and be subjected to the proceedings in representative capacity, proceedings under section 130 cannot be carried out against any such person. Only the person who holds title alone (and not other person acting on behalf) can be subjected to confiscation proceedings as it involves loss of title in favour of the Government. Therefore, identification of 'right person' is itself an important first step that the Proper Officer must undertake. Abruptness of action is acceptable in proceedings under section 67 or 129 but not under section 130.

For these reasons, it is important to refer back to the discussion under section 67(2) where goods cannot be routinely seized unless they are (i) liable to confiscation on *prima facie* consideration by the Proper Officer and (ii) such goods 'are secreted' and discovered during search and not left openly by taxable person.

ICAI Handbook on 'Show Cause Notice' may be referred to for a detailed discussion on the due process of adjudication.

3.7 Offending articles alone liable for confiscation

Before proceeding further, it is important to explain which are the goods that come within the scope of confiscation proceedings. Goods involved in offence and conveyance (used with knowledge of offence) are offending articles and liable to confiscation proceedings. Documents, books, or things that are liable to seizure under section 67(2) but cannot be confiscated. Other goods (not being 'offending articles') of same taxpayer are also NOT liable to confiscation. Therefore, it is important that specific goods that are

offending be identified after seizure in order to initiate confiscation proceedings.

One of the instances where goods become liable to confiscation is where taxable goods are not accounted for by a person [clause (ii) to section 130(1)]. Say, these goods are mixed with other goods (inventory) that are accounted in the books, are all mixed up and found in an undisclosed warehouse and are seized during search proceedings under section 67(2). In this case, confiscation proceedings cannot be initiated against the entire quantify of 'seized articles' without first isolating the 'offending articles' and leaving out quantity that has been accounted for in the books. This is just to illustrate the complex nature of precise identification and record-building that is necessary to conduct valid confiscation proceedings. Lethargic record-keeping by the department would result in illegal confiscation if the taxpayer were to show that certain quantity is duly accounted for in the books. This would result in tainting the entire proceedings. Consider the same illustration where the goods are fluids (liquids or gasses) stored in a warehouse or intangible property.

This illustration further shows the importance of adjudication to arrive at identify of 'offending articles' liable to confiscation. And seizure is the tool to 'secure and identify' goods liable to confiscation.

Ambiguity or failure to identify 'goods liable to confiscation' can be fatal to confiscation proceedings. Goods (fluids) must also be carefully identified based on where they are stored or the unaccounted quantity within the overall quantity mixed and stored must be established properly, in order to confiscate that quantity of unaccounted goods (fluids).

3.8 Provisional release before confiscation

Since loss of custody frustrates confiscation, it is clear that seizure must precede confiscation and when seizure is carried out, even with the objective of confiscating, all the provisions of section 67 become available to taxpayer as a precursor to confiscation proceedings. Refer detailed discussions in earlier paragraphs regarding 'due process' to conduct inspection, then extend it to search (necessary to give rise to seizure), provisional release of seized articles and post-notice application for disclosure of discovery during proceedings as a measure of safeguard for taxpayer about the validity of said proceedings.

As such, the taxpayer is entitled to seek provisional release in Form GST INS-04 under section 67(6) read with rule 140. **There is not a single exception or instance where the law permits Proper Officer to deny request for provisional release provided taxpayer is willing to execute bond and furnish security**. It would, therefore, be remarkable that Proper Officer (Authorized Officer) would refuse provisional release in spite of security offered in terms of rule 140.

Regardless of the quantum of liability estimated, once Form GST INS-02 is issued, the taxpayer may immediately request the Proper Officer who is enjoined with the duty to grant provisional release in Form GST INS-04. Care must be taken not to delay collection of seized articles beyond one month from approval of provisional release, after providing Form GST INS-04 to execute bond and furnish security as such failure is another situation that authorizes disposal of offending goods under rule 141 (Refer *clause 17 to Notification No. 27/2018-Central Tax dated 13 Jun 2018)*.

3.9 Effect of amendment in Section 130

The opening words in section 130(1) were amended w.e.f. 1 Jan 2022 from *"Notwithstanding anything contained in this Act, if any person"* to *"Where any person"*. Effect of this amendment can be appreciated to briefly consider the unamended provision.

Prior to this amendment, section 130 operated as a self-contained code, independent of section 67 or (unamended) section 129. In that form, there was no guidance as to how seizure was to be carried out in order to initiate confiscation proceedings. And it also created doubt if confiscation proceedings could be independently initiated on its own merit, but there were no machinery provisions which are necessary preparatory steps to initiate confiscation proceedings, without violating the bar on routine intervention by Proper Officer with the self-assessment of liability under section 59 by a registered person.

With this amendment, it becomes clear that wherever instances under other provisions of CGST Act, akin to any of the five situations listed in section 130(1), then the confiscation proceedings may be initiated. This makes section 130 harmonious with other provisions of CGST Act which also provide the necessary precursory machinery provisions to enable the initiation of confiscation proceedings.

But even after this amendment, no confiscation under section 130 can be initiated without lawful seizure. Seizure of offending goods (consignment or conveyance) is permitted only under:

- 67(2), provided these proceedings are valid and proper (discussed earlier); or
- 129(1), provided documents listed in rule 138A are found to be wanting.

Where seizure stands vacated (for lack of jurisdiction or sufficiency of documents), proceedings under section 130 will abate since seizure is no longer in subsistence. Merely because the goods continue to remain in custody of GST department, the custody is not under a valid seizure to feed the pre-condition for valid confiscation. Power of confiscation is procured by (i) valid seizure of offending goods and (ii) lapse of statutory minimum limitation to secure release in the manner prescribed. Not even this amendment from 1 Jan 2022 can bring confiscation proceedings *in vacuo*.

Power of confiscation cannot be procured by Proper Officer acting under section 68 and will require to undertake fresh inquiry by invoking powers (and covered by matters listed) in section 67(1)(a) and establish existence of ingredients of:

- section 130(1)(i) – *"supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or"*
- section 130(1)(iv) – "*contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or"*

It is important to note *"supplies in contravention"* v. *"contravenes"*. Both these provisions are (i) during the commission of contravention (ii) evidence of intention (to evade). Powers of confiscation cannot be invoked before contravention but during such contravention, with the knowledge that evasion will result, form the pith of the jurisdiction in section 130.

3.10 Separate proceedings for goods and conveyance

All offending articles comprising of taxable goods of taxpayer forming one single offence may be included in one proceeding under section 130. But offending articles comprising of conveyance owned, operated by another person (owner of conveyance or warehouse-keeper) which are involved in

the offence, must be proceeded under separate proceedings. This is to ensure each person (taxable person and owner of conveyance / warehouse-keeper) is free to advance his own defence without being fettered to each other's approach to the notice issued.

Where there are different offences or different persons, joinder of all persons in one proceeding is not permitted because the due process in section 74 read with section 130 requires each 'noticee' to be put at notice separately and allowed to independently defend his case, in the interests of justice. And each is a separate offence although in connection with the same transaction of offence.

Admissions by taxpayer could not implicate the transporter or the warehouse-keeper although such admission may have an effect against the other person or *vice versa*. Proceedings against goods and conveyance are two separate proceedings unlike proceedings under section 122 where there may be co-defendants or primary and secondary defendant.

3.11 Option to pay 'redemption fine'

All persons liable to confiscation are entitled to avoid forfeiture of title (to offending articles) due to compulsory transfer of property in the offending articles (goods or conveyance) by availing the 'option' to pay fine-in-lieu of confiscation. Such persons liable to confiscation must be allowed an opportunity to pay 'fine in-lieu of confiscation'. Offences by servants and agents also result in the consequences under section 130 to the owner of the offending articles. It is a matter of right of person charged with an offence attracting confiscation to be allowed an option to pay an amount as fine to secure release (or redemption) of the offending articles (goods or conveyance).

Now, let us say tax evaded is Rs.10 lakhs but if the value of goods is Rs.1 crore and the conveyance used to commit the offence is valued at Rs.2 crores, the option to pay redemption fine allowed will entail a fine which can be *"up to market value of offending articles less tax chargeable*". The Proper Officer is under no obligation to show lenience with regard to imposition of redemption fine. And the redemption fine can exceed the tax sought to be evaded. Use of expensive conveyance to carryout evasion of tax involving a smaller amount does not compel the Proper Officer to reduce the redemption fine but he is obliged to consider such fine that would 'meet the ends of justice' equivalent to the extent of loss that would ensue if confiscation had

been ordered of that conveyance. The Proper Officer must exercise discretion based on the facts and circumstances of the case and offer redemption fine and penalty which must not be less than tax payable on the offending articles and shall not exceed their market value less tax payable thereon. If a conveyance is hired in committing the offence, then the owner of the conveyance may be permitted to redeem the conveyance on payment of fine equal to tax involved in the offending articles.

The only exception in case of confiscation of conveyance is where the offence is committed by the taxpayer, without the knowledge of the owner of the conveyance, in such a case, consequences under section 130 will not apply in so far as conveyance is concerned although the taxpayer may still be liable to all consequences in respect of goods involved in the offence.

3.12 Penalty or fine

Penalty under section 122 is against the person liable for contravention of law, whereas fine-in-lieu of confiscation or redemption fine under section 130(2) is against offending articles (liable to confiscation). The difference between these two must be noted and not referred interchangeably as if causing 'double jeopardy'. They are two different 'causes of action' *albeit* arising from a single transaction. As such, both consequences can arise simultaneously but with respect to a person under section 122 and against the property under section 130. Penalty under section 122 is not the same as fine under section 130(2).

Imposing penalty under sections 122 to 129 requires due process of adjudication (with right to appeal). Imposing fine-in-lieu of confiscation under section 130 follows another proceeding (independent of the one imposing penalty) involving adjudication (with an independent right to appeal).

For this reason, the right person must be identified in order to issue the show cause notice. Show cause notice issued to the wrong person will result in demand against that person being raised but dropped and the demand against the right person being omitted. Such errors are especially possible in case of interception of conveyance under section 68 when a representative appears before the Proper Officer. After due verification of the identity of the right person, proceedings should be addressed to such person but may still be served on such authorized person.

Even though the quantum of fine-in-lieu of confiscation (discussed earlier) and the penalty under section 122 are linked in the *second proviso* to section 130(2) to a certain 'maximum amount' to be levied as penalty, it must be kept in mind that the provision does not take away the discretion of the Proper Officer to impose any lower amount that would meet the ends of justice. Details of various penalties and fine-in-lieu of confiscation that are applicable against each person are as under:

Person	Against	Penalty	Confiscation or Redemption Fine
Taxpayer	Goods	Sections 122 to 129	Section 130
Owner or Hirer	Conveyance	Sections 122 to 129	Section 130

It is necessary to identify 'under which provision' of law a demand is being made and 'against which person'. Cause-of-action is one that must be permitted in the specific provision and the notice must bring home the allegation by discharging the burden of proof in respect of 'ingredients' laid down in the said provision that make up the contravention giving rise to the said cause-of-action.

3.13 Penalty not a 'tax'

Although provisions of section 129(1) referred to 'tax' prior to amendment w.e.f. 1 Jan 2022, it must be appreciated that it continues to remain an impost in the nature of penalty because tax can only be imposed when the taxable event under section 9 occurs. It is for this reason that the tax paid under section 129 is also listed as blocked credit under section 17(5)(i) and payment of penalty under section 129(1) referred to as 'tax' cannot be claimed as credit even if a debit note were to be erroneously issued subsequently.

The amendment w.e.f. 1 Jan 2022 sets right this anomaly by making necessary changes but interestingly the bar in section 17(5)(i) continues perhaps as a matter of abundant caution.

3.14 Final confiscation and disposal

Where payment of fine-in-lieu of confiscation is NOT opted either by the owner of goods or by the owner-hirer of the conveyance then, show cause

notice will still be required to be issued under section 74 in conclusion of proceedings under section 67 or under section 130 (in Form GST MOV-10). Show cause notice will contain (i) all grounds to support confiscation and (ii) option allowed to pay redemption fine and written record of its exercise by each person.

However, from Financial Year 2024-25 onwards, this shall be dealt in accordance with section 74A, which does not distinguish between fraud and non-fraud cases.

Once adjudication order is passed in confiscation proceedings, it results in 'vesting of property' in the Government. Section 130(7) prescribes that after three months wait period for deposit of redemption fine (if opted), the Proper Officer may still dispose of the confiscated articles and appropriate the same against dues recorded in the adjudication order. It is interesting to note that these three months coincides with the period of three months allowed under section 107(1) to file appeal (similar to section 78 before taking recovery action under section 79) and then confiscated articles may be disposed-off and proceeds deposited with the Government. Reference may be made to rule 144 for the detailed procedure.

3.15 Procedure for disposal

Goods in custody of Proper Officer may be disposed of in accordance with rule 144 by conducting e-auction:

- Notice of restraint in Form GST DRC-16 for property not in custody;
- Notice in Form GST DRC-10 or Form GST DRC-17 indicating time and place of e-auction;
- Notice to successful bidder in Form GST DRC-11 to pay in fifteen days; and
- Certificate of transfer in Form GST DRC-12 to successful bidder on payment.

NOTE: Pursuant to amendments made vide Finance Act, 2021 (w.e.f. 1 Jan 2022), auction is prescribed within fifteen days to recover penalty ordered under section 129(3) of the CGST Act read with rule 144A of the CGST Rules.

3.16 Conclusion (Section 130)

Confiscation is a remedy against offending articles (goods and / or conveyance) that commences with establishing the ingredients that make up the offence and proceeding to finally confiscate and dispose the offending articles or permit taxpayer to pay fine-in-lieu of such confiscation. Confiscation is meant to inflict a monetary burden on offender that not only appeases society for the offence attempted but also acts as a deterrent.

Confiscation is a procedure of delivering punishment to erring taxpayer in respect of offending articles and it is not an emergency power like section 67. And even though this may appear to be exceptional anti-avoidance powers being exercised, the courtesy of 'due process' is available even in these cases to ensure justice is not denied in confiscation proceedings under section 130.

Chapter 4
Interception of Consignment (Sections 68 and 129)

4.1 Overview of steps involved

Based on the provisions of law, given below is an overview of steps involved that one may anticipate to be carried out by departmental officers and discharge their statutory duties validly and in accordance with the requirements of law:

Step 1: Intercept vehicle and verify documents.

Step 2: If verification of documents is not satisfactory, record statement of the person-in-charge of conveyance in Form GST MOV-01 about discrepancy (ies) in documentation (immediate).

Step 3: Pass orders for physical verification/inspection of consignment (goods and conveyance) in Form GST MOV-02 (immediate) and update online in Form GST EWB-03 in Part-B within 24 hours.

Step 4: Conduct physical verification/inspection within 3 days and report in Form GST MOV-04 and update the final report in Form GST EWB-03 in Part-B within 3 days.

Step 5: If required, seek extension for inspection in Form GST MOV-03.

Step 6: Repeat step 4.

Step 7: Pass orders for release in Form GST MOV-05, if no discrepancies are found.

Step 8: If detention is required, issue order of detention in Form GST MOV-06 and issue "show cause notice in Form GST MOV-07", within seven days.

Step 9: Pass Order imposing penalty in Form GST MOV-09, within further seven days, imposing penalty as per section 129(1).

Step: 10: Where request for release is sought under section 129(1)(c) along with undertaking to furnish security, permit provisional release in Form GST MOV-05 on furnishing of security equal to amount due under section 129(1)(a) or (b).

Note: Confiscation proceedings under section 130 have been delineated from proceedings under section 129 and as such issuance of second notice in Form GST *MOV-10 is not applicable w.e.f. 1 Jan 2022.*

Step 11: In case of failure to discharge penalty demanded in Form GST MOV-09, goods detained will be liable to disposal *via* e-auction within fifteen days (or lesser period if deemed necessary) to recover penalty levied.

4.2 Authority (Section 68)

Circular No. 3/3/2017-GST dated 5 Jul 2017, contains a list of Central Tax Officers empowered to intercept and inspect conveyance 'during movement'. Corresponding authorization issued by Commissioner of State Taxes need to be considered to confirm jurisdictional Proper Officer empowered to intercept conveyance. Electronic way bill ("EWB") was implemented *vide Notification No. 15/2018-Central Tax dated 23 Mar 2018* w.e.f. 1 Apr 2018.

Where the movement is completed without the documents prescribed under rule 138A and somehow the conveyance is not intercepted during movement then, authority of inspection is extinguished due to completion of movement. There is no provision in the law to inspect *post facto*, that is, by verifying that movement has been carried out without the prescribed documents but missed attention of Proper Officer(s) on all those occasions. This does not however preclude imposition of penalty under section 122(1)(xiv) in independent proceedings to discourage habitual non-compliance with and blatant disregard to requirements of section 68 read with rule 138A.

4.3 Verification on interception

Interception of conveyance is not to conduct reassessment of the transaction in question such as:

- Validity of movement declared to be 'other than supply';
- Correctness of 'form' of supply declared;
- Classification including correctness of exemption claimed;
- Valuation including nature of supply undertaken;
- Any other matter not relevant to the requirements of section 68 of the CGST Act read with rule 138A of the CGST Rules.

After identifying applicability of EWB under rule 138 of the CGST Rules, verification on interception of conveyance must be limited to the availability of:

- Invoice or delivery challan if movement is declared to be 'by way of supply'; or
- Delivery challan if movement is declared to be 'other than supply'; and
- EWB if consignment value* is above the prescribed limit.

**EWB will be required irrespective of consignment value where movement is to job-worker.*

EWB must contain Part A and Part B details correctly and completely. Part A corresponds to the transaction particulars of the movement and Part B corresponds to the identity of the conveyance.

Very limited role is conferred on the Proper Officer and rules 138B and 138C make it abundantly clear that matters outside this limited role are not to be taken up for examination. Similarly, there is no discretion to Proper Officer to overlook non-fatal non-compliances. Reference may be had to the *Circular No. 64/38/2018-GST dated 14 Sept 2018,* where 'minor errors' are listed and it is stated that nominal amount of penalty may be imposed instead of declaring that penalty under section 129 will not apply to minor errors.

4.4 No preconditions for jurisdiction to intercept

This is probably the most distinguishing feature of all provisions in the law where interception does not require any preconditions, as long as interception is by a Proper Officer (duly authorized). Conveyance may be stopped for verification of documents without any suspicion or other form of intelligence being available about likely non-compliance. For this reason, taxpayer is only permitted to question whether the Proper Officer is duly authorized to intercept and inspect conveyance and consignment but not question the reasons for selecting the conveyance for interception and not any other conveyance travelling at the same time and in the same route.

Upon interception and inspection, if there is any discrepancy noted then proceedings may continue as discussed in this section. Neither can omission to intercept any specific conveyance nor selection of any specific conveyance be questioned. Jurisdiction to intercept is duly authorized,

interception of 'any' conveyance in exercise of that extant jurisdiction and not an investigation or reassessment of liability.

4.5 Discrepancy and penalty

Even the slightest discrepancy will invite penalty under section 129, whether in respect of (i) goods only or (ii) both goods and conveyance which are referred to as 'detained articles'. The Proper Officer enjoys no discretion as per section 68 or rules thereunder to overlook minor discrepancies in EWB compliance, except as permitted *vide Circular 64/38/2018-GST dated 14 Sept 2018,* discussed earlier. Deviation from the requirements of rule 138A triggers imposition of penalty that are pre-defined in the law. The role of the Proper Officer is to examine 'whether discrepancy exists' or not. Quantum of penalty and manner of its imposition must follow due process in the law. And interception, detection of non-compliance and imposition of penalty are to be reported on portal in Part B of Form GST EWB-03 within 3 days from date of interception of the conveyance as per rule 138C.

The process of imposing penalty comprises of (i) interception (ii) inspection (ii) detention 'or' seizure and then (iii) penalty. Details of penalty applicable under section 129(1) are:

Section 129(1)	Taxable Goods	Exempt Goods
a) Owner of goods accepts penalty imposed	200% of tax	2% of value or Rs.25,000, whichever is lower
b) Owner of goods disputes penalty demand	50% of value or 200% of tax payable, whichever is higher	5% of value or Rs.25,000, whichever is lower
c) Either case	*Furnish equivalent security (Form GST MOV-05 + bond in Form GST MOV-08)*	

It is important to understand the nature of 'discrepancy' and the applicable course of action in the law. Here, **'time is of essence in proceedings'** under section 68 and 129. Opportunity must be allowed to the person-in-charge ('PIC') or owner of the detained articles, to execute bond (with surety or bank guarantee) and release the detained articles, as the objective is not to compel payment of penalty under these emergency provisions where luxury of time is not available to avail rights and remedies available in law

and with Form GST MOV-08, the interests of the Revenue are anyway well protected.

As per first proviso to section 129(6), the conveyance shall be released on payment by the transporter of penalty under section 129(3) or Rs. 1 lakh, whichever is less.

4.6 Penalty automatic or negotiable

The language of section 129 does not appear to provide any leeway for the Proper Officer to examine the *bona fides* of the taxpayer, entertain discussions as to the reasons for the non-compliance and vary the extent of penalty to be imposed in case discrepancies are detected in EWB compliance. At the same time, not all non-compliances with the requirements in rule 138A are with the objective of perpetrating a fraud by moving taxable goods with intention not to report the transaction.

There could be several instances where there may be clerical errors in data in Part A of EWB, incomplete or incorrect data in Part B of EWB; a valid EWB may have expired or a valid EWB may been newly generated long after commencement of movement but just before interception of conveyance.

Discretion is admittedly the root cause of arbitrariness. And until *Circular no. 64/38/2018-GST dated14 Sep 2018* came to be issued, penalty under section 129 was 'automatic'. However, with the issue of this Circular, CBIC introduced two classes of discrepancies in EWB compliance, namely (i) major discrepancy and (ii) minor discrepancy. Major discrepancies being those with a fraudulent purpose in not generating EWB And minor discrepancies being attributable to inadvertence which is non-recurring in EWB compliance.

As such, on interception of conveyance where discrepancies are detected in EWB compliances, the taxpayer is now in a position to put forward material to show that those were not major discrepancies and explain the bona *fides* to claim complete waiver or levy of nominal penalty. After all, this circular is the Government's own interpretation of the law which is binding on the Proper Officer.

4.7 Detention on inspection

Detention DOES NOT imply seizure of consignment or conveyance as discussed in the context of section 67. And when the taxpayer 'admits

penalty' imposed under section 129(1)(a) and discharges the same, proceedings will be concluded without any order of detention or seizure as per *proviso* to section 129(1). In terms of amended section 129(6), the Proper Officer is empowered to dispose of the detained articles even without first causing their title to pass to the Government.

Without express seizure, detailed articles will remain in the custody of the Proper Officer and the taxpayer will either have to discharge the penalty imposed or furnish security. It is important that custody of detailed articles be secured, in case the taxpayer chooses to contest the penalty imposed.

Omission of section 129(2) which expressly provided for provisional release under section 67(6) is not because provisional release is barred in section 129 but because provisional release is permitted inherently in section 129(1)(c) and that making section 67(6) applicable would be superfluous. Refer *Circular No. 41/15/2018-GST dated 13th Apr 2018* which prescribes the form and manner of securing provisional release of detained articles.

Immediately after inspection is completed and reported in Form GST MOV 04 and in Part B of Form GST EWB-03, release order or provisional release order must be issued in Form GST MOV 05. Necessary application in plain paper may be submitted seeking relief under section 129(1)(c) along with undertaking to furnish security for the provisional release of detained articles (suggested format is given in Chapter 8). Once detention is ordered in Form GST MOV 06, show cause notice must be issued in Form GST MOV 07. It is seen that this notice is very cryptic and even more cryptic is taxpayer's response. Some devious practices noted can be e.g., (i) undated statements forcibly collected from driver or other PIC (ii) long delays in reporting interception and detention and (iii) completely offline mode of conducting proceedings.

Taxpayers need to ensure (i) application under section 129(1)(c) is kept handy for submission (immediately on interception); and (ii) take all steps to secure release of detained articles with or without deposit of penalty imposed.

Once show cause notice is issued in Form GST MOV-07, adjudication as to the reasons for detention and extent of penalty imposed (discussed earlier about discretion now available) must be concluded by an order in Form GST MOV 09. This is an appealable order. It is common that the PIC or Owner may file an appeal under section 107 either based on temporary login

allowed by Proper Officer or manually, as section 107(1) permits *"any person aggrieved by any decision or order"* to prefer appeal within 3 months from the date of communication of the order. Denying rights and remedies in law does not serve the ends of justice.

4.8 Provisional release after detention

Immediately after the discrepancy is noted in inspection report in Form GST MOV 04 and update in Part-B of Form GST EWB-03 is filed on the portal, provisional release must be requested in plain-paper application (suggested format given in Chapter 8) which will be permitted on furnishing a bond in GST MOV 08 vide provisional release order also in Form GST MOV 05.

Very often it is noted that the Proper Officer rejects the application for provisional release of detained articles under section 129(1)(c) and insists on payment of penalty imposed notwithstanding section 129(5). The First Appellate Authority admits appeal against the order in Form GST MOV-09 (discussed in detail later) considering the amount paid under section 129(1)(a) or (b) to be a 'deposit'. It is interesting that when the payment is appropriated on Common Portal, the 'disputed demand' appearing in Table 14 of APL-1 will be NIL. It remains to be examined how Government will redress the grievance when taxpayers are successful in appeal and the entire payment is declared to be refundable, when the limitation under section 54 will come in the way of securing refund due to this appropriation by intercepting Officer.

4.9 Adjudication on detention

After inspection is completed and reported in Form GST MOV-04, Part-B of Form GST EWB-03 is updated; Whether detained articles are released (when no discrepancies are noted) or provisionally released (on application in all other cases), an order of release is passed in Form GST MOV-05.

Immediately, detention is ordered in Form GST MOV 06 based on the presumption that leans in favour of the Revenue in the inspection report in Form GST MOV-04 and a show cause notice is issued in Form GST MOV-07 as required under section 129(3) within 7 days. Hearing is expeditiously carried out and a speaking order is passed in Form GST MOV-09. In view of paucity of time to conclude these proceedings, Form GST MOV-07 and Form GST MOV-09 proceedings will be completed very quickly.

Taxpayers are often concerned that this urgency does not allow sufficient time to defend allegations. But the reasons for the limited time allowed for these proceedings are (i) the short point that is to be taken up for verification during inspection – are the documents prescribed in rule 138A available or not, and whether they are free of any discrepancies – or not and (ii) taxpayer having exercised option NOT to secure provisional release in Form GST MOV-05 even before detention order in Form GST MOV-06 is passed, there remains nothing further to be examined by the Proper Officer. Also, the concern about holding without necessary facilities for safe-keeping, detained articles would be exposed to the risk of theft or the possibility to be detained for very long. For these reasons, it appears that the swift procedure prescribed meets the ends of justice adequately.

As per section 129(5), on payment of amount of penalty imposed under section 129(1), all proceedings under this section will be concluded.

4.10 Insistence on payment of penalty for release of consignment

The remedy under section 129(1)(c) should be allowed by Proper Officer intercepting consignment, when the taxpayer is confident that penalty under section 129 is not attracted and a request is made to release the consignment based on security in the manner prescribed in Form GST MOV-08. In such cases, payment of penalty should not be insisted upon.

Contrary to express words in section 129(5), a taxpayer may proceed to discharge penalty imposed and still prefer appeal. Taxpayer-appellant must ensure to challenge in appropriate cases in Form GST APL-01 that "payment of penalty was insisted prior to release of consignment and option to furnish security was not allowed". This is to ensure that the First Appellate Authority does not find the appeal not maintainable in view of the finality laid down in section 129(5). Filing a request before the intercepting Proper Officer to release the consignment under section 129(1)(c), even if the same may not be entertained as required as per extant instructions is advisable as this letter will go a long way in ensuring maintainability of appeal before the First Appellate Authority. In the case of *Hindustan Steel & Cement v. STO & Ors. W.P. 17454 of 2022, dated 20 Jul 2022,* the Hon'ble Kerala High Court held that getting goods released on payment, does not mean acceptance of the demand and opting to forego right to appeal.

In fact, there are a catena of judicial authorities wherein for technical reasons in the e-way bill etc., the goods and vehicles were detained. The petitioner paid the tax and penalty and the judicial authorities in writ petitions directed the authorities to refund the wrongfully collected amount of tax and penalty. Like in the case of *Shanu Events v. The State of UP, Writ Tax No. 258 of 2022, dated 5 Aug 2022,* the Hon'ble Allahabad High Court dealt with a matter wherein the goods vehicle was detained under section 129 since the petitioner mentioned wrong PIN Code and as such the validity period of the e-way bill gets reduced. The mistake was inadvertent. The authorities demanded tax and penalty. The Court held it to be a *bona fide* mistake on the part of the petitioner and directed the authorities to refund the amount so paid by the petitioner.

4.11 Appeal against interception

Since 'any person' aggrieved by a decision or order is entitled to appeal under section 107(1), even unregistered person (whose consignment is intercepted in a State where goods were transiting) is entitled to prefer an appeal based on temporary login credentials created by the Proper Officer intercepting the consignment.

Failure to register objections in respect of show cause notice in Form GST MOV-07 will result in conclusion of detention proceedings *vide* speaking order in Form GST MOV-09 confirming penalty leviable under section 129(1). The remedy against the order in Form GST MOV-09 is an appeal before the First Appellate Authority under section 107 but failure to register objections in respect of show cause notice would operate to taxpayer's disadvantage in the appellate proceedings.

In appeals filed under section 107(1) against orders passed under section 129(3), pre-deposit of 25% of penalty is prescribed in section 107(6). In all other orders demanding penalty, pre-deposit is required only in respect of disputed tax.

4.12 Inapplicability of section 125

It is also noted that when submissions are made against imposition of maximum penalty prescribed in section 129(1), taxpayers have been granted relief by way of reduction in penalty by (i) waiving penalty under section 129 and (ii) imposing penalty under section 125. This is noted in the orders of First Appellate Authority and sometimes even in Form GST MOV-09.

When these proceedings are made a self-contained code by its opening words in section 129(1), it would be a misapplication of law to invoke an altogether different provision in section 125 to impose an *ad hoc* amount of penalty.

These inadvertent errors have come to be revised in proceedings under section 108 causing administrative pile-up due to lack of understanding of jurisdiction of Proper Officer to apply section 125 to facts which are already covered exhaustively and exclusively by section 129.

4.13 Inapplicability of post-verification proceedings

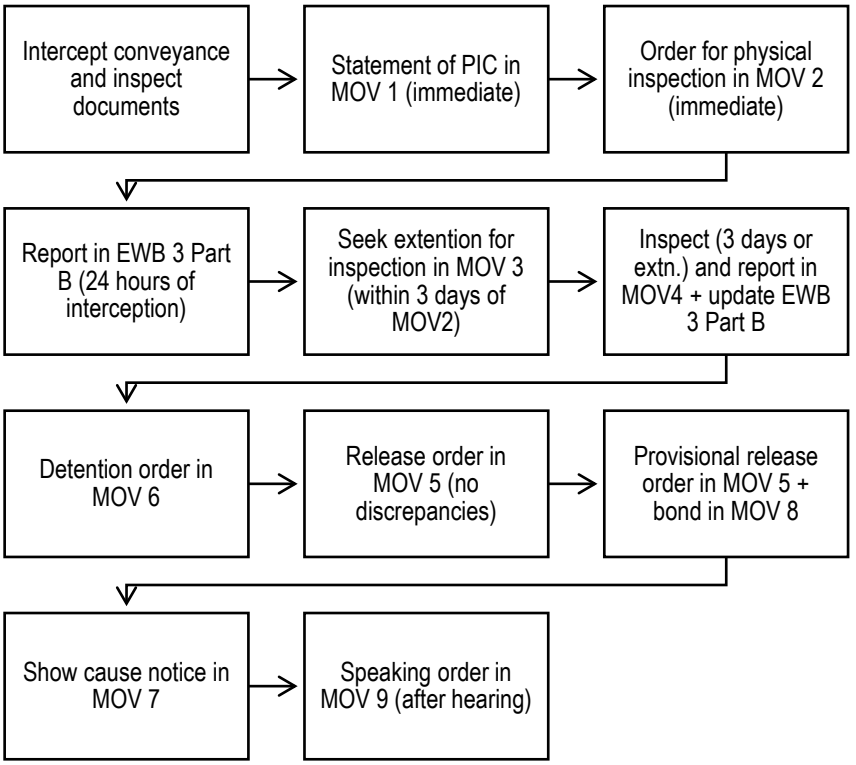
Penalty under section 129 for discrepancies in compliance with section 68 are permitted to be imposed 'only on interception'. In other words, this penalty can be imposed when non-compliance is caught 'red-handed' only. For this reason, penalty under section 129 cannot be imposed in proceedings under section 61, 65 or 67, even if, there are clear discrepancies noted such as (i) EWBs not issued (ii) EWB data erroneous or (iii) any other discrepancy. If not caught red-handed, the taxpayer escapes consequences. However, penalty under section 122(1)(xiv) may be imposed. (discussed earlier).

4.14 Inspection process walk-through

Detailed procedure for proceedings under section 129 are contained in the following circulars:

- *Circular No. 41/15/2018-GST dated 13 Apr 2018* (master Circular) – Procedure for interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances
- *Circular No. 49/23/2018-GST dated 21 Jun 2018* (amending); - and
- *Circular No. 64/38/2018-GST dated 14 Sept 2018* (also amending)

These Circulars are issued under section 168 and are binding on all intercepting Proper Officers. The workflow that is contemplated in the law and carried through in the rules is represented below in the walk-through diagram:



4.15 Conclusion (Sections 68 and 129)

Payment of penalty under section 129 concludes all proceedings. As such all amounts paid under section 129 partake the character of penalty. Non-compliance with section 68 attracts an irrefutable presumption of 'intent to evade' payment of tax such that consequence against taxpayer for failure to comply with section 68 is attracted under section 129 as well as consequence against detained articles, whether goods or both goods and conveyance, is attracted under section 129(6), though both may be collected from taxpayer or transporter who comes forward and appears in these proceedings.

To meet the ends of justice, Government has intervened to create two classes of discrepancies in EWB compliances so that *bona fide* cases are not visited with the rigours of section 129 that are best invoked in cases of flagrant violation of the inconspicuous administrative feature in GST of using EWB to monitor tax compliances remotely.

Chapter 5
Arrest (Section 69)

5.1 Overview of steps involved

Based on the provisions of law, given below is an overview of steps involved that one may anticipate to be carried out by departmental officers and discharge their statutory duties validly and in accordance with the requirements of law:

Step 1: Identify 'warrant cases', that is, cases which require Commissioner for good and sufficient 'reasons to believe' that arrest is warranted and issues an 'order' (commonly understood as 'arrest warrant') to be executed by any authorized Officer.

Note: Offences listed under clauses (a), (b), (c) or (d) of section 132(1) and punishable under sub-clause (i) or (ii) of section 132(1) and offences punishable under section 132(2) shall require Commissioner's warrant.

Step 2: Officer executing the warrant, is required to establish the identity of the person and place the said person under arrest. The Officer is then required to report execution of warrant back to Commissioner. The Officer is required to inform the detenu (or arrested person) about the grounds for arrest and then to produce before Magistrate within 24 hours to consider releasing him on bail or grant remand for further investigation.

Step 3: Remand application to be filed by the officer before Magistrate seeking custody for investigation. The Magistrate may grant remand for custodial interrogation or order judicial remand with visitation authorized to conduct interrogation of detenu (discussed later).

Step 4: All other cases which do not require Commissioner's warrant, are commonly understood as 'summons cases', that is, cases under other clauses of section 132(1) which are stated in section 132(4) to be 'non-cognizable and bailable' offences.

Step 5: Issuance of show cause notice under section 74 for offence and detention under section 69 for prosecution under section 132 may be taken up in parallel proceedings independently.

5.2 Nature of punishment (Section 132)

Section 132 identifies 9 causes-of-action that attract 'punishment' but the power to arrest is found in section 69 where the Commissioner may authorize the arrest of such person(s) based on 'reasons to believe' (refer earlier discussion about reasons to believe and its challenge). Offences, with respect to punishment specified, are of two types:

- Non-cognizable and bailable offences; and
- Cognizable and non-bailable offences.

5.3 Purpose of arrest in criminal prosecution

Punishment is the sentence awarded after conclusion of trial. Arrest of persons is not the commencement of sentence but preparatory to filing of complaint under section 190(1)(a) of Cr.PC, now section 210(1)(a) of BNSS, by GST Officer requesting Magistrate to take cognizance of the offence involved and direct trial.

It was held in the case of *Ramesh Chandra Mehta v. State of WB AIR 1970 SC 940*, that where Customs Officers were held not to have power to file a report under section 173(2), now section 193(2) of BNSS before the Magistrate (under section 190(1)(b) of CrPC, now section 210(1)(b) of BNSS) but only a complaint under section 190(1)(a) of Cr.PC, now section 210(1)(a) of BNSS, to take cognizance and proceed with commencement of trial for the offence. It is important to note that the entire legal principles relating to Customs Officers is now applicable to GST Officers. Reference may be had to the decision in the case of *Tofan Singh v. State of TN (Cr.Apl. 152 of 2013)* which came up for consideration more recently in *Vijay Madanlal Chowdhary & Ors. v. UoI & Ors (SLP (Cr.) 4634 of 2022).*

For this reason, Customs (and GST) Officers are not Police Officers. As such, limitation against 'self-incrimination' or bar on obtaining evidence in proceedings under section 24 to 30 of Indian Evidence Act, 1872, now section 22 to 24 of BSA, are NOT available to proceedings before the Customs Officers. And this position may not be too far from being followed in GST, considering that the only equivalence to Proper Officer in GST with an officer-in-charge of police station is found in section 69(3)(b) which only limits the powers to 'release on bail' and no others.

Reference may be had to section 41 of Cr.PC, now section 35 of BNSS, where Police Officer is empowered to arrest a person without an order (or warrant) from Magistrate. In GST, Commissioner's order is a must in specified offences. Reference may be had to the decision of Apex Court in *Siddharth v. State of UP & Anr. (Cr.Apl.838 of 2021)* where these instructive words are extracted in *Instruction No.2/2022-23 [GST-Inv.] dated 17 Aug 2022* and reproduced:

"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

Herein lies the key elements when arrest is justified and the mitigating factors to avoid arrest:

Justification to arrest	**Mitigating Factors**
Custodial investigation is necessary	No risk of (accused) absconding
Heinous crime is involved	Obeying summons *
Possibility of influencing witness	Cooperated in investigation
Risk of (accused) absconding	

** Furnishing documents and providing clear and non-evasive replies and voluntary payment of tax.*

Note: Merely because there is a statutory right to arrest is not enough to arrest the accused unless the mitigating factors are shown to be missing.

Reference may be had to section 41B of Cr.PC, now section 36 of BNSS, where the procedure after arrest is described which is made applicable to section 69(3) stating that the Proper Officer must:

- record accurate, visible and clear identification of arrested persons;
- prepare memorandum of arrest; and
- inform the person arrested that the next of kin or friend is entitled to be informed of the arrest.

Arrest is often considered as punishment in itself. However, nothing is farther from the truth. Magistrate who takes cognizance of the offence alleged may, initially examine the complaint filed and determine the application by Revenue for remand in terms of section 167 of Cr.PC, now section 187 of BNSS, for custodial interrogation. CBIC has advised in *Instruction No.2/2022-23 [GST-Inv.] dated 17 Aug 2022* (para 4.1) to ensure Officers are well-informed about the provisions of Cr.PC so that there is no misapplication of the law. Matters involving interpretation of law or where differences in interpretation are involved, do not justify exercise of exceptional powers of arrest is clearly reiterated in *Instruction No.2/2022-23 [GST-Inv.] dated 17 Aug 2022* (para 3.4).

5.4 Detention Process

The detenu or a person who has been arrested who is to undergo trial, will need to undergo certain legal process as listed hereunder:

(a) *Admit bail (and release)*– This is the first requirement even before anything relating to allegations of offence are taken cognizance of by the Magistrate. Remand application will state the reasons why custody of detenu is required to secure cooperation in investigation and to explain transactions relating to the offence. This is custodial interrogation. If the Magistrate is not satisfied with the reasons for custodial interrogation but reasons for detention such as risk of flight or absconding or risk of destruction of incriminating evidence yet to be seized or intimidation of witnesses, etc., appear to exist, then the detenu may be remanded to judicial custody (lodged in a prison).

(b) *Complaint* – This is the next step where the Magistrate examines the complaint filed by GST Officer ('complainant') under section 190(1)(a) of Cr.PC, now section 210(1)(a) of BNSS, for Magistrate (para 5.3 of Instruction No.2/2022-23 [GST-Inv.] dated 17 Aug 2022) to take cognizance of the offences described in the complaint. If the Magistrate is not satisfied that a *prima facie* case has been made out to take cognizance and direct trial to be commenced, the Magistrate

may direct that investigation be continued under section 156(3) of Cr.PC, now section 175(3) of BNSS, in order to make a *prima facie* case, failing which, the complaint will be dismissed and the detenu discharged.

(c) *Trial* –Magistrate frames charges based on the *prima facie* case made out in the complaint. Once charges are framed the 'due process' of trial in Cr.PC, now BNSS, will commence such as (i) pleading by accused (ii) leading evidence by either side (iii) examination-in-chief, cross-examination and re-examination (iv) arguments (v) judgement and (vi) sentencing. These are oversimplified steps to show the long path that one has to travel before conviction and not to be the background material on prosecution.

(d) *Adjudication* – While Magistrate is not concerned with adjudication of the offence involving payment of tax, interest and penalty, the findings in adjudication can have a bearing on the trial. With Economic Offences (Inapplicability of Limitation) Act, 1974, there is no risk that accused may escape prosecution if the trial were deferred until conclusion of adjudication (and appeal) in the civil case under section 74 of the CGST Act. Therefore, at any time after taking cognizance, the Magistrate may post the matter for a long date so that final findings in the civil case may be produced which can be material to be taken into consideration in the trial. Considering the advanced age of accused, complainant may approach the Magistrate to take up trial pending disposal of the civil case which may be pending in appeal. Magistrate may direct that the complainant may seek early hearing of the civil case or may allow this application and take up the trial.

In the light of the above (deliberately over-simplified for ease of presentation for this discussion) steps presented, the process of prosecution in GST may be understood by contrasting the (limited) role played by arrest in relation to the (larger) process of prosecution until conclusion of trial and passing of an order sentencing the accused if found guilty.

5.5 Offences attracting punishment under section 132

Section 132 lists 9 offences for which prosecution can be launched. The offences are given hereunder:

(i) Supply of goods or services or both without the cover of invoice with an intent to *evade* tax;

(ii) If any person issues any invoice or bill without actual supply of goods or services or both leading to wrongful input tax credit or refund of tax;

(iii) Any person who avails input tax credit using invoice referred in point (b) above or fraudulently avails input tax credit without any invoice or bill;

(iv) Collection of taxes without payment to the Government for a period beyond 3 months of due date;

(v) Evasion of tax, or obtaining refund with intent of fraud where such offence is not covered in clause (a) to (d) above;

(vi) Falsifying financial records or production of false records/ accounts/ documents/ information with an intent to evade tax;

(vii) Acquires or transports or in any other manner deals with any goods which he knows or has reasons to believe are liable for confiscation under this Act or rules made thereunder;

(viii) Receives or in any way, deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this law;

(ix) Attempts or abets the commission of any of the offences mentioned above.

This section enables institution of prosecution proceedings both against the offenders and also against those persons who are instrumental in committing such offence. Such persons who are aiding the commission of the offence are punishable only if they retain the benefits arising from the offence.

The period of imprisonment and quantum of fine varies depending on the amount of tax evaded or seriousness of the offence as listed below.

Amount of Tax evaded/ erroneous refund/ wrong ITC availed or utilized	Fine	Imprisonment
Exceeding Rs. 5 Crores	Yes	Upto 5 years
Rs. 2 Crores – Rs. 5 Crores	Yes	Upto 3 years
Rs. 1 Crore – Rs. 2 Crores	Yes	Upto 1 year
In the absence of specific/ special reasons to be recorded in the judgment of the Court, the imprisonment in the above cases will not be less than 6 months.		

If any person commits any offence specified in clause (f), above, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Repetitive offences, without any specific/ special reasons recorded in the judgment of the Court, will entail an imprisonment term of not less than 6 months and can extend up to 5 years plus fine.

All the offences covered in section 132 are non-cognizable and bailable except the following offences which are cognizable and non-bailable:

Offences covered in points (a) to (d) as mentioned above, if the amount of tax evaded or input tax credit wrongly availed or utilized or refund wrongly taken exceeds Rs. 5 crores.

Every prosecution proceeding initiated requires prior sanction of the Commissioner.

The explanation to this section states that "tax" includes which are levied under CGST, SGST, UTGST, and GST Compensation Cess Act. Basically, it includes the amount of tax evaded, amount of input tax credit wrongly availed or utilized or refund wrongly taken under the Act.

However, there is another school of thought which interprets section 132 as under:

Primary Offences: Section 132(1) contains a list of 9 different categories of offences. It is very well established that for any person to be charged with an offence, the act or abstinence of accused must be 'described with the words listed in the law' and all the ingredients laid down in specific clauses of section 132(1) must be found to exist in the 'act or abstinence' with evidence to be considered in the trial. Out of these 9 different categories, 'primary

offence' is one where the resultant effect of any category of offences is that **'(i) tax is evaded or (ii) credit is wrongly availed or utilized and (iii) refund is wrongly taken'** which are liable to minimum punishment prescribed in section 132(1) if the amount involved in these primary offences are at certain levels.

There are five offences listed in clauses (a) to (e) of section 132(1) and such five offences involve one of these primary offences, that is, these five offences result in (i) tax evasion [clause (a), (b) and (e)] (ii) fraudulent claim of credit clause (c) and (iii) failing to deposit (for certain duration) the tax collected clause (d). These three are referred as 'primary offences' and entail certain punishment when the amounts involved are at certain levels. For instance, in case of the offence relating to falsification of stock records, the consequence may be that tax is evaded but the fact of such falsification itself is the offence and not the consequent evasion of tax. As such, falsification of records would NOT fall within the scope of primary offence to attract the minimum punishment prescribed (provided monetary limits also exists).

It is only in case of 'primary offences' that the minimum prescribed punishment in section 132(1) is attracted:

Amount involved	Punishment
Above Rs. 5 cr.	5 years with fine
Rs. 2 cr. to Rs. 5 cr.	3 years with fine
Below Rs.2 cr.	TBD **
** *to be determined by Magistrate after trial.*	

Here, it is important to note that 'primary offence' is traceable in clause (a) to (e) of section 132(1). *Note that clause (a) to (d) alone are referred to in section 69.* Clauses in section 132(1) that relate to primary offences must be distinguished from clauses in section 132(1) that require Commissioner's warrant under section 69(1) (more on that later). As regards the primary offences, it is important to understand the nature of such offences.

Associated Offences: Having identified that 'primary offences' are traceable in clauses (a) to (e) of section 132(1), it would be safe to state that clauses (f) to (l) of section 132(1) relate to offences by association. Words of section 132(1)(iii) bring this aspect out clearly: *"in case of **any other offence** where the amount of ……. exceeds one hundred lakhs rupees….."*. That is offences

which are punishable under section 132 but those that DO NOT come within clause (i) or (ii) of section 132(1) will NOT attract minimum punishment prescribed. Had this clause (iii) of section 132(1) simply stated "in case where the amount of tax……." then, it would have operated as the third slab of monetary limit for the specified punishment. But the words "any other offence" operates to the exclusion of offences listed in clause (i) and (ii) of section 132(1). For this reason, primary offences whose monetary value is below Rs. 2 cr. DO NOT have any minimum prescribed punishment. And by this reasoning, associated offences above Rs. 2 cr. and below Rs. 1 cr., also DO NOT have any minimum prescribed punishment and is left to the judgement of the Magistrate trying the case.

Associated offences and the punishment prescribed are:

Amount involved	Punishment
Above Rs. 2 cr.	TBD **
Rs. 1 cr. to Rs. 2 cr.	1 year with fine
Below Rs.1 cr.	TBD **
** *to be determined by Magistrate after trial.*	

Offence by association is not to be limited to abetment but all those transactions that constitute an offence under section 132(1) but without meeting the standards of primary offence under clauses (a) to (e) thereof. As regards these associated offences, it is important to recognize the nature of these offices and differentiate with primary offences.

Specified case where a six-month punishment is prescribed relates to cases where he commits or abets the commission of following offence:

Section 132(f) - Falsification of records to mislead plain understanding of a transaction, procure advantage and result in evasion. For example, job-worker charging lower rate of tax when services are supplied to unregistered principal where higher rate of tax is applicable as per job-work tariff notification;

Repeating any of these offences although not separately listed, attracts maximum punishment [as per section 132(2)].

5.6 Offences and ingredients to offences

Having understood that offences must be (i) pleaded and (ii) proved, to prosecute the lawbreakers under section 132 in the complaint filed before Magistrate, it is inescapable that the 'ingredients' that make up the specific offence must be precisely brought out in the complaint.

However, reference may be had to section 222 of Cr.PC, now section 245 of BNSS, where the Magistrate can convict the accused of a minor offence, not included in the charge-sheet, if its ingredients are proved during the trial. Refer also section 319 of Cr.PC, now section 358 of BNSS, where the Magistrate can arrest a witness if during examination, he appears to have committed an offence punishable even if not charged. These provisions apply to proceedings under section 132 (but not section 122) as the transaction involved in the offence is at-large before the Magistrate and GST Officer's role is limited to that of a complainant.

5.7 Invisible ingredients

The expression 'offences' is used in section 132 as well as in section 122. Care must be taken to observe subtle and invisible ingredients that differentiate offences under these two sections. In other words, an action or inaction that constitutes offence under section 132 may also constitute offence under section 122 but the converse is not necessarily true. While a detailed discussion about section 122 is not germane to the topic in this handbook, reference to some comparative illustration is relevant to demonstrate the subtle and invisible ingredients that are super added in section 132.

Offence described in section 132(1)	**Offence described in section 122(1)**
(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, ***with the intention to evade tax****;*	*(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;*

Every omission to pay tax on outward supply attracts penalty under section 122(2) but to impose penalty under section 122(1), the person must not already be a registered person but should be liable to tax. Such person will be liable to penalty under section 122(1)(a). But for this person to be liable to

prosecution for offence under section 132(1)(a), not only is the existence of (i) a taxable outward supply required to be established but also (ii) that such person has undertaken this taxable outward supply with the intention to evade tax.

'Intention' is not a matter of accusation but one where the following must be established and to the satisfaction of the Magistrate, namely:

- Such person carried out a taxable outward supply;
- With full knowledge that it is liable to output tax;
- Chose not to discharge this liability; and
- Employed some 'devise' as a means to conceal this transaction from being detected.

As can be seen from the above, it is not easy to establish 'intention', that too, to the satisfaction of a Magistrate who is independent and will accept only credible evidence to support the allegation and be swayed by conjecture. Intention is not a secret thought in the mind of the accused taxpayer. Intention is the visible manifestation of that secret thought. It is the immediate end of undertaking the transaction and employing means that make detection impossible (or a device) in the ordinary course.

Employing a 'device', is to create a distraction that someone viewing the transaction on the face of it is likely to miss or reach a conclusion that no liability exists. For example, omitting to issue a tax invoice itself is that device that makes detection of liability impossible. Omitting to take registration, omitting to account the outward supply or payment received, all add up to fortifying this 'device' or means of rendering a taxable outward supply undetectable. This is an invisible ingredient that must necessarily exist in order to attract section 132(1)(a) which is not required to attract section 122(1)(i). It requires fewer ingredients to attract penalty under section 122(1)(i) and much more required to attract punishment under section 132(1)(a)

Now, the phrase 'to evade tax' is used in section 74 as well as in section 132. While the result must be evasion of tax in both cases, the taxable person alone will be fastened with the burden of tax (and interest) under section 74 and penalty under section 122(2)(b), but "whoever" commits the offence (or causes and retains benefits) under section 132(1)(a). A deep

study of each of the clauses will bring out the subtle and invisible ingredients that are required to establish an offence under section 132.

No proceeding under section 69 may be initiated in the absence of the culpable mental state. While section 135 makes this requirement (of culpable mental state) presumable, but that will be by a Court and not at the time of arrest. Requirement of this special ingredient cannot be bypassed or presumed while granting authorization to proceed with arrest. This is emphasised in para 3.3 of *Instruction No.2/2022-23 [GST-Inv.] dated 17 Aug 2022.*

5.8 Warrant 'offence' cases

Primary offences are listed in clauses (a) to (e) to section 132(1) but out of these offences, section 69(1) picks out and places on the Commissioner a duty to issue an 'order to arrest' (also popularly referred as 'warrant') where the monetary value involved exceeds Rs. 2 cr. Offences that do not require warrant are referred as 'summons cases' in Cr.PC.

There are offences where the punishment is as much as in 'warrant cases' such as fraudulent refund of value exceeding Rs. 2 cr. or repeat offences even of lower monetary value, but since these cases are not considered for the requirement of Commissioner's warrant to arrest, they will continue to be proceeded as summons cases.

Warrant cases above Rs.5 cr. will be cognizable and non-bailable and between Rs.2 cr. to Rs.5 cr. will be non-cognizable and bailable. It is important to note that this classification (cognizable or non-cognizable) is relevant for safeguarding persons accused of offences liable to be prosecuted under section 132. Summons cases must be proceeded with even greater care as the supervisory overseeing is NOT applicable to restrain any over enthusiasm by Proper Officer. With the right to bail as per section 50 of Cr.PC, now section 47 of BNSS, is a protection against unlawful detention of persons accused who are still considered innocent until established otherwise in trial.

5.9 Arrest in 'warrant cases'

Section 69(1) clearly specifies that Commissioner's order (warrant) is necessary for the accused to be arrested in respect of offences whose monetary value is above Rs. 2 cr. and charged under clauses (a) to (d) of section 132(1) and 132(2) (warrant cases). This leads to the understanding

that persons accused of offences (of 4 clauses) whose monetary value is exceeds Rs.2 cr. or of subsequent offences of any monetary value can be arrested.

Requirement to place a person under arrest is limited to (i) offences under section 132(5), which are cognizable and non-bailable and (ii) offences under section 132(4) which are non-cognizable and bailable but are covered by section 69(1) being only offences under section 132(1)(a) to (d) and punishable under clause (ii) and offences under section 132(2). This is clear from para 5.1.1.1 and 5.1.2 to *Instruction No.2/2022-23 [GST-Inv.] dated 17 Aug 2022.*

Apex Court in *Radhika Agarwal v. UoI & Ors. (WP (CRL) 336/2018 dated 27 Feb 2025* upheld the validity of section 69 of CGST Act but laid down instructive guidance that the safeguards available in BNSS cannot be violated by Officers in the discharge of their duties and reaffirmed the guidelines in *DK Basu v. State of WB (1997) 1 SCC 416*. Some of the rights and remedies upheld are:

Description of rights or remedies of persons detained	Cr. PC	BNSS
Procedure for arrest	41B	36
Right to meet Advocate	41D	38
Disclose place of detention to family or friends	50A	48
Health and safety of detenu	44A	56

Safeguards available through section 67(10) of CGST Act in making the remedies in Cr PC, now BNSS, to GST proceedings is reiterated at para 50 of this decision which reads as: *"50. To a large extent, our reasoning and the ratio on the applicability of the Code to the Customs Act would equally apply to the GST Acts in view of Sections 4 and 5 of the Code. Sub-section (10) to Section 67 of the GST Acts postulates that the provisions of the Code relating to search and seizure shall, as far as may be, apply to search and seizure under the GST Acts, subject to the modification that for the purpose of sub-section (5) to Section 165 of the Code, the word 'Magistrate' shall be substituted with the word 'Commissioner'. Section 69, which deals with the power of arrest, a provision which we will refer to subsequently, also deals with the provisions of the Code when the person arrested for any offence under the GST Acts is produced before a Magistrate. It also deals with the*

power of the authorised officers to release an arrested person on bail in case of non-cognizable and bailable offence, having the same power and subject to the same provisions as applicable to an officer in charge of a police station. We would, therefore, agree with the contention that the GST Acts are not a complete code when it comes to the provisions of search and seizure, and arrest, for the provisions of the Code would equally apply when they are not expressly or impliedly excluded by provisions of the GST Acts."

5.10 Rights of Arrested Person

Constitutional guarantee of 'right to life' includes the right NOT to be detained before trial, subject to exceptions provided in law. Section 50 of Cr.PC, now section 47 of BNSS, provides for bail as a matter of right so as not to leave this Constitutional guarantee a mere illusion.

The arrested person has the right to be informed of the allegation and be released on bail or the Officer should inform the next of kin or friends to arrange to approach the Magistrate and secure bail. Section 57 of Cr.PC, now section 58 of BNSS, is very important provision where the arrested persons are not to be detained for more than 24 hours but swiftly be presented before a Magistrate under section 167 Cr.PC, now section 187 of BNSS, to consider the terms of release on bail or to order remand to departmental / judicial custody.

Commissioner's warrant must be executed by the Proper Officer speedily and unexecuted warrants will expire within the time specified therein unless extended. Warrants cannot remain outstanding indefinitely. Executed and lapsed warrants must be returned to the Commissioner for noting or declaration of the absconder or for further directions. Refer para 5 in *Instruction No.2/2022-23 [GST-Inv.] dated 17 Aug 2022* regarding 'post arrest' formalities.

5.11 Bail and bond

Bail is an acceptance by way of undertaking to comply with the orders of the Magistrate (or Proper Officer) releasing the detenu or arrested person to enter appearance when required in investigation or trial. Bail will be attached with a monetary value of such undertaking which can be invoked to enforce (not a substitute for) appearance of arrested person when so ordered as per section 436 of Cr.PC, now section 478 of BNSS.

Bail without monetary security may be permitted with personal surety of other persons of repute and standing in society to be responsible to procure arrested persons appearance when so ordered.

As per section 167 of Cr.PC, now section 187 of BNSS, where the offence charged entails a maximum punishment below 10 years, the maximum period of such pre-trial remand cannot exceed 60 days ('statutory bail').

Magistrate generally grants departmental remand (for custodial inquiry) or judicial remand (all other cases) for 15 days (maximum) and determines whether further remand is justified. The accused who is remanded to (departmental or judicial) custody, must be presented before the Magistrate every time and remand will be extended (up to a maximum of 15 days). The Magistrate may authorize judicial remand beyond 15 days, if an application is made and found satisfactory, but not beyond 60 days.

5.12 Anticipatory bail

Non-bailable cases entitle persons to seek anticipatory bail where there is a reasonable apprehension that the Proper Officer may issue a warrant to arrest; in such cases anticipatory bail under section 438 of Cr.PC, now section 482 of BNSS, may be sought from Magistrate or Appellate Court.

Where anticipatory bail is considered, bail and bond with monetary security or personal sureties along with any additional conditions such as surrender of passport, etc., may be imposed and form an integral part of the bail. Default with these conditions would vacate the bail and person may be immediately placed under arrest and produced before the Magistrate to consider remand or release on fresh bail.

Anticipatory bail may be sought before the Magistrate entitled to try the offence or directly before the jurisdictional High Court. Anticipatory bail is not barred even when offence is described as 'cognizable and non-bailable' in section 132(5) of the CGST Act.

Care must be taken not to rush to secure anticipatory bail because petition seeking bail will require petitioner to demonstrate to the satisfaction of the Court that there are reasonable grounds for apprehending arrest and undertake to extend full cooperation to investigating Officer. Further, Court may impose conditions such as surrender passport, undertake to attend every summons, assist is securing appearance by connected persons, etc. may result in onerous terms that call for a relook at this apprehension of

arrest. Summons can be issued soon after authorization of inquiry, even without any inspection or search. Summons can be issued to secure evidence or to execute arrest warrant. When warrant is issued by Commissioner, execution of warrant is imperative. Omission to execute a warrant is not an option for the investigating Officer. Secrecy about a warrant having been issued is key to ensure successful execution and arrest. Disclosure (of warrant being issued by Commissioner) can result in persons evading arrest.

Failure to appear when summons is issued would be grounds to assume non-cooperation. Non-cooperation coupled with imminent involvement in specified offence (above threshold limit) provides 'reasons to believe' needed to invoke section 69. Participation in summons, especially on multiple occasions offers grounds for grant of bail (even if arrested due to existence of other ingredients). But after person is arrested, all events prior to arrest become academic. Until arrest, anticipatory bail must be rushed into or assumed to be readily granted by Court. Summons is not the means to arrest. Warrant is essential to arrest. Attendance in summons may lead to arrest, but not without a warrant having been issued pending execution. Summons issued when warrant was already issued and waiting to be executed is clearly misleading, but Courts can neither stop overlap of appearance in summons and arrest of person concerned nor impose a gap of time between conclusion of appearance in summons and securing appearance again to place said person under arrest.

After person is placed under arrest, in petition seeking bail, every minute detail in the sequence of events, accumulation of material and conclusions they support to provide the ingredients forming the 'reasons to believe' that the said person is likely to have indulged in the specified offence (above threshold limit) will have to be gone into. And at this stage if there is anything wanting, then the person will be enlarged either by quashing the arrest as illegal *(Arvind Kejriwal v. Directorate of Enforcement (2025) 2 SCC 248)* or by granting regular bail.

Anticipatory bail requires Court's satisfaction that nature of transaction and role of person concerned (as affirmed in petition) is such that arrest is imminent and undertaking by said person to cooperate with investigation is sufficient to meet ends of justice. Opportunity during investigation for payment of tax (allegedly) evaded will be available. Accepting to discharge and protesting the payment are contradictions in law. Offer to deposit a sum

without admitting wrongdoing is no assurance that person concerned will not be arrested. Although arrest is not sentencing, but the threat of arrest or actual arrest has proved beneficial in securing pre-notice payment or collection of evidence to support the demand. It is this unequal position that has been the pith of judicial authorities in *Tofan Singh in 2020* and *Radhika Agarwal in 2025* by Apex Court.

5.13 Prosecuting offences and adjudication of SCN

Prosecuting offences under GST law will be before a First Class Judicial Magistrate as per section 134 of CGST Act. And the decision of the Magistrate will be final as regards all matters of the trial. The Magistrate will consider the complaint filed by the Proper Officer under section 190(1)(a) of Cr.PC, now section 210(1)(a) of BNSS, before taking cognizance of the alleged offence and then decide whether to permit trial or dismiss the complaint.

Final determination of the allegation of tax evasion or fraudulent credit or refund and other offences are subject to adjudication and appellate process. Prosecution for the offence is a separate proceeding of law. Determination on the question of tax evasion will have a bearing on the prosecution of offence but adjudication of SCN is not a pre-condition for the commencement of trial, which is a civil proceeding involving the same or different persons which is connected with the criminal prosecution involving the accused.

The Magistrate is to form an opinion whether any prejudice will be caused to the State by non-prosecution of the offence complained against the accused until final determination (as per process in GST law) on the question of tax evasion.

In spite of the delay of inclusion of GST laws in the Schedule to Economic Offences (Inapplicability of Limitations Act), 1974, it is common for trial to progress, pending final disposal of the SCN, so as not to render prosecution futile due to starting the trial *in seriatim*. However, final arguments and judgement are reached but kept pending if the outcome of final disposal of SCN would have a bearing on maintainability of entire trial itself. And if the Magistrate were to keep the trial in abeyance until the entire time consumed in appellate proceedings in GST law to be exhausted, the justice *in rem* assured by section 132 will have been lost by the delay.

5.14 Conclusion (Section 69)

The power of arrest has recently been found to be used as a threat to extract voluntarily compliance and discharge of GST through Form GST DRC-03 challan. It is important to note that such non-descript voluntary admission of liability and payment can be immediately claimed as refund under 'others' category citing clerical errors while making some other nominal voluntary payment. As in terms of section 54 read with *Circular No. 125/44/2019-GST dated 18th Nov 2019*, it is incumbent upon the Proper Officer to issue acknowledgement under rule 90 if the application is *prima facie* free from defects. Refund of any voluntary payments do not bear any reference to the underlying investigation proceedings. As such, the taxpayer will immediately receive refund of that amount which was so vigorously extracted.

As such, **proceedings under section 69 are to set the law in motion** as regards prosecuting for offences under section 132. As these are early days of GST, it is important to closely follow the development of this law in the matter of offences.

The amount of tax in default can be paid both through cash and credit ledger.

Further, to defend bail petitions, we may add one important decision of the Hon'ble Delhi High Court in the matter of *Amit Gupta v. DGGI, [2022] 141 taxmann.com 209 (Delhi) dated 29 Apr 2022,* wherein the Court dealt with bail petition where the question of payment of tax in default by the petitioner arose. The question was whether the tax in default can be paid through credit ledger also. The Court answered the question in affirmation and decided the matter in favour of the petitioner.

Chapter 6
Summons (Section 70)

6.1 Overview of steps involved

Based on the provisions of law, given below is an overview of the steps involved that one may anticipate to be carried out by departmental officers and discharge their statutory duties validly in accordance with the requirements of law:

Step 1: Proper Officer carrying out 'inquiry' proceedings is empowered by law to issue summons to 'any person' who is considered necessary to (i) give evidence or (ii) produce document or any other thing, during any investigation arising from inspection-cum-search under the provisions of GST law.

Note: No proceeding under any other provision in the CGST Act describes the discharge of duties by the Proper Officer with the expression 'inquiry'. And 'inquiry' is to investigate and 'enquiry is to ask. It is important to record on file about the nature of 'inquiry' which justifies issuance of summons;

Step 2: 'Any person' (not limited to taxable person only) may be summoned to depose which must be conducted in a courteous manner. Summons notice must be issued to a specific person, for a specific purpose, that is, to give evidence or produce document or any other thing (either or both) and on a specified date and location.

Note: Disclosure whether the summons is to (i) first party (likely offender) or (ii) third party (witness against another offender) must be disclosed.

Step 3: Where 'document or any other thing' is to be produced, the same may be acknowledged, if produced and the same must be duly noted on the files and where not so produced, that too may be noted on the file.

Step 4: Where 'evidence' is to be given, it may be in the manner deemed fit by the Proper Officer and 'question and answer' mode is common method which may be adopted (details of this method discussed later).

Step 5: After deposing, the person summoned will be permitted to exit from the said location.

6.2 Purpose of summons

Summons is an integral part of an 'inquiry' and it was held in the case of *Baleshwar Bagarti v. Bhagirathi Dass (1909) ILR 35 Cal. 701* that *"the traditional distinction between the verbs 'enquire' and 'inquire' is that enquire is to be used for general senses of 'ask',* ***while inquire is reserved for uses meaning 'make a formal investigation'****"*. For this reason, summons cannot be issued during proceedings under section 61 or 65 as these provisions involve 'enquiry' and not 'inquiry'. Important to note that CBIC *Instruction No.3/2022-23 [GST-Inv.] dated 17 Aug 2022 ("Instruction No.3/2022-23")* (para 2) brings out this aspect.

Summons must be understood whether it is a (i) first Party summons, that is, person who is being investigated is summoned or (ii) third-Party summons, that is, person who is summoned is being considered as a witness in investigation against another person. Reference to 'offender(s)' in para 3(iv) of *Instruction No.3/2022-23*, makes it clear that 'inquiry' can be only in respect of offences.

During the course of any 'inquiry' under the Act, the Proper Officer is empowered to summon persons to (i) give evidence or (ii) produce a document or any other thing. It is important to note that summons is not the end of investigation but a step in the course of investigation. There is no provision that deals with 'inquiry' so it must be understood as part of every 'process of discovery' in any investigative proceeding such as 67, 129 or 130 leading to a notice under section 74 or 76 including proceedings under 132.

Offences are listed in section 122 up to 132. But then, demand under section 73 or 74 also attract penalty which is specified in section 122(2)(a) or (b). So, reference to 'offences' (in para 3(iv) above) must be traceable to those listed in section 122(1), (1A) or (3) and other sections following 122 up to 132 but not to penalty under section 122(2). Care must be taken to understanding the nature of proceedings initiated to avoid submitting to invalid proceedings as the exceptional powers vested in section 70 routinely matters (opening words in para 1 of *Instruction No.3/2022-23*). A reliable test is to look at 'who' is exercising these powers and verify if this exceptional power is being exercised by Authorized Officer under section 67 (discussed earlier) or by other Proper Officer vested with powers under section 61 to 65.

Care must be taken to ensure that summons cannot be issued in a routine manner and non-specific documents such as books of account for the FY or

all invoices and receipts or input tax credit register, etc., cannot be called for in summons proceedings and particularly documents that are available on the Common Portal (para 3(v) of *Instruction No.3/2022-23*). Section 160(2) bars taxpayers from entertaining improper notice (to appear) issued under section 70. Such summons is improper as 'roving inquiry' cannot be made under section 70.

In particular, CBIC *Instruction No.3/2022-23* states in para 2 that "Officers are also advised to explore instances when instead of resorting to summons, a letter for requisition of information may suffice". Care must be taken not to misread this provision that even when no 'inquiry' is underway, Officers may 'call for' documents or information which may fall foul of intervention by exception that is the hallmark of GST when tax liability is to be determined on self-assessment basis. Also consider that when 'evasion of tax' is involved, there are safeguards to taxpayer in the form of pre-conditions and grant of authorization before any intervention, it is inconceivable that in proceedings that are far lesser than 'evasion of tax' powers that are far wider would be sanctioned by Parliament. With these safeguards in the law that are reiterated in *Instruction No.3/2022-23*, summons in a routine manner will become a rarity in practice.

Summons must state a specific document or thing to be produced. Non-specific and vague summons with an exhaustive list of documents is also liable to be unsuccessful. Summons can also call a person to enter appearance and record a statement on oath. Statements on oath are a weak form of evidence and questions must be simple and straight-forward when posed to the deponent. Care must be taken to consider if statements being made by deponent are based on (i) personal knowledge of facts or (ii) records and documents inspected. Opinions and interpretation will not be tenable.

The Hon'ble Court declined to interfere with the issuance *of the summons:*

"The case of Himgiri Ispat (P) Ltd. and Others v. Commissioner of the CGST, Commissionerate at Dehradun and Another, in WPMS No. 145 of 2022, [2022]-TIOL-281-HC-Ukhand-GST dated 14-Jan-2022, dealt with a matter wherein the petitioner challenged the summoning order issued by the Inquiring Officer for recording the statement of the petitioner. The Hon'ble Court declined to interfere with the issuance of the summons, however, observed that the petitioner shall appear before the Authority summoning him

for recording his statement. The petitioner shall not be detained in the office of the Commissioner, who is the summoning authority beyond the reasonable working hours. The Court directed that before taking any steps to arrest, the Commissioner of CGST, Dehradun shall comply the provisions of sub-section (1) of Section 69 in letter and spirit. In other words, he must come to a definite conclusion that the petitioner has committed the offence as enshrined thereon, on the basis of credible materials and before authorizing any person to arrest the petitioner and the Commissioner must record the reasons and material that he took into consideration in authorising the officer to arrest him. A violation of this order shall be considered contempt of Court. Writ application is disposed of. [Para 4, 5]"

6.3 Persons fit to be summoned

Persons expected to have knowledge pertinent to the investigation or inquiry may be summoned. It is a matter of careful consideration as issuing summons to MD of the company may not serve the ends of the investigation as MD may not be the right person to make statements about tax payments and compliance (see para 3(vi) of *Instruction No.3/2022-23*). And equally, accountant in the company may also not be the right person. There is no rule that may be followed in this regard. It all depends on the nature of information sought to be collected in summons proceedings. Persons are not barred in law to refrain from answering after entering appearance. Self-implication cannot be enforced upon any deponent.

6.4 Authorized Person to appear

Insertion of section 70(1A) makes to mandatory for person summoned to appear, at least, through an Authorized Person. This amendment does not imply that appearance in summons was optional earlier. It only permits an Authorized Person to appear on behalf of person summoned to depose. However, where the investigating Officer is of the opinion that named person must appear to give evidence, then appearance by Authorized Person would not be sufficient compliance. There is no vested right in the relief available in this sub-section (1A). If the evidence is such that it can be given by Authorised Person, then there is no occasion that the named person must necessarily appear. This would come up where the person summoned is an officer-in-charge of the duties involving the matter of inquiry and the evidence to be given is based on official records and NOT personal knowledge.

This new sub-section should not encourage taxpayers to request CAs to appear on their behalf. CAs have no role during investigation, especially, when it pertaining to business transactions authored by taxpayer. CAs must be mindful of their independence and objectivity. If CAs are summoned in their name and due to their role as auditor or tax advisor, care must be taken to promptly attend and give fact-based and not opinion-based evidence.

It would help to note that financial statements carry an interpretation of the underlying financial transaction. Tax treatment based on disclosure in financial statements is an interpretation of an earlier interpretation. To now affirm that the financial transaction is the most accurate presentation of the tax position is to misplaced understanding of the premise on which financial statements are prepared and disclosure determined. Financial statements, ITR, 26AS, TDS data, etc., are unreliable sources of information, sufficient to start an inquiry and not to conclude the inquiry.

6.5 Summons is judicial proceeding

Summons issued by Proper Officer is a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (hereinafter referred to as "IPC"). Evading service of summons or failing to attend when summoned are punishable under sections 172 to 174 of IPC. Equivalence of these proceedings to a Civil Court proceeding is referred to in section 70(1) dealing with summons proceedings before a Proper Officer. However, that does not still permit the Proper Officer to arrest and punish persons summoned for these offences. A complaint under section 190(1)(a) of Cr.PC, now section 210(1)(a) of BNSS, will be required in order to prosecute persons under sections 172 to 174 of the IPC. Reference to 'judicial proceeding' is not for the purposes of Cr.PC or BNSS but for the purposes of the Code of Civil procedure, 1908 (hereinafter referred to as "CPC") to incorporate the 'due process' and the 'judicious nature' of the summons proceedings.

6.6 Permitted matters – 'give evidence or produce a document'

It is explicit in section 70(1) that:

- A specific natural person may be summoned to give evidence (discussed later); or

- A non-specific person or representative of a legal entity to produce a document.

Care must be taken that 'books of accounts' are not called for, by issuing summons. Summons being a very significant proceeding, it should not be resorted to in routine matters but only in matters of investigation and after much thought and consideration as to the exact information required. It is important to note that when summons calls for production of certain specific documents, it must be those that are contemporaneously available in the normal course of business. It is not harmonious with the provisions of section 70 to direct persons to 'prepare statements or reports' and submit them in summons proceedings. Reliability or probative value of such 'specially prepared' documents are lacking, to be used in supporting allegations later when notices are issued.

It would not be incorrect to decline (in writing) when documents that are not contemporaneously available in the normal course of business are being called for on the grounds that a broad and non-specific inquiry is being attempted through summons proceedings. The Proper Officer must invoke section 67 to initiate 'inquiry' and then collect books and records under section 71 instead of calling for documents under section 70.

Issuance of multiple summons is another indicator that a 'roving inquiry' without any specific area of 'evasion of tax' is under investigation. Multiple summons do not go well in adjudication or appellate proceedings, where the validity of summons is objected in an application under section 67(10) (discussed earlier). It is important to consider that statements recorded under section 70 are not perfect evidence in the light of questions about its reliability raised expressly by the deponent by filing a retraction (discussed later) or by showing them to be made involuntarily while replying to the notice.

6.7 Nature of 'question and answer' method

In order to maintain clarity and simplicity, evidence is collected in the form of a 'question and answer' format which is a common method adopted.

Summons proceeding is to be conducted without the anxiety and stress surrounding inspection and search proceedings under section 67. Question-answer approach is popular to progress from admitted facts to transactions under investigation and culminating in admission of facts providing the

ingredients to offence. Questions are usually simple and straight-forward. Questions relate to the facts such as their existence or absence. Questions will be short and to-the-point. Essay questions are not very productive in view of the tendency of the response to wander into irrelevant matters.

A logical sequence of questioning is known to be followed while being confined to 'collecting facts'. Deponent's statements which involve expressing an opinion (about any aspect) is not considered to be of much value. Statements comprising 'facts' will be relevant and valuable in furthering the inquiry.

Statements made are 'voidable' proof of the facts and merely a means of collecting information that aids the inquiry. Facts (and not statement, even if when recorded on oath) are required by a Court of law to bring home the allegation; statements on oath point in the direction of facts which can be doubted by a Court of law even when it is not retracted or altered by the deponent. Given the limited extent that statements (even when recorded on oath) are not perfect evidence, care must be taken while invoking this power which, when applied carefully, can be valuable to the inquiry.

6.8 Questions to be avoided

Complex legal questions and questions involving interpretation of law or their application to facts are not normally posed to the deponent. For example, if a question as to what is the place of supply is posed, the expression 'place of supply' is a legal concept and not one that a common person would be expected to answer, that too, accurately. Where this question is answered saying – place of supply is factory at Madhya Pradesh – it clearly shows that observable information is being provided and not the interpretation expected in the given facts.

Another aspect to be observed is questions posted are not difficult to understand either by the way it is constructed (in a complicated manner) or it is long and cumbersome to be easily understood (and replied in a meaningful manner). Questions must also not be about interpretation of facts but about the existence of facts only and the interpretation will be left to the Proper Officer.

CBIC has issued *Instruction 1/2023-24-GST (Inv.) dated 30 Mar 2024* wherein it has listed dos and don'ts for investigating Officers which are authoritative and binding on Officers and instructive to taxpayers:

Ref.	Description	Remarks
2(a)	Pr. Commissioner responsible for 'approving' intelligence developed within territorial jurisdiction of Commissionerate	SCN cannot be issued claiming to have 'developed intelligence'
2(b)	Initiation of investigation must be after prior written approval of Commissioner, when it involves: • First time incidence of tax • Big industrial house or MNC • Sensitive matters of national importance • Matters pending before GST Council	Such approval cannot be arbitrary or without taking any material on record
2(c)	Avoidance of simultaneous inquiry by more than one Officers in the same Commissionerate	Inquiry by Anti-evasion or Head-quarter Preventive units of the erstwhile formations in Central Excise have a dwindling role with the demarcation of jurisdiction and pre-conditions to invoking those powers (discussed in earlier chapter)
2(d)	Avoidance of simultaneous inquiry by Central and State Officers	Section 6(2)(b) bars simultaneous exercise of jurisdiction for given FY (since issues under inquiry are confidential)
2(e)	Reference by Pr. Commissioner of intelligence developed to Zonal Pr. Commissioner to refer matters to Pr. DG, DGGI to take up and conclude said inquiry when the matter covers multi-locational inquiry (same PAN)	When reference is received by DGGI, the source of intelligence or initial inquiry may be called into question to affirm that the inquiry is valid and proper
2(f)	Reference by Pr. Commissioner	

	of intelligence developed to Zonal Pr. Commissioner to refer matters to Pr. DG, DGGI to issue alert and conclude said inquiry when the matter covers multi-locational inquiry (multiple PAN)	
2(g)	Zonal Pr. Commissioner to make reference to GST Policy or TRU to place before GST Council in case of divergence of interpretation	Section 11A matters must have a record of the origin of the divergence of views and practices
2(h) & (i)	Inquiry into records-based matters must be undertaken without recourse to summons of: • Listed companies • PSUs or Corporations • Government departments • Authorities (established by law) Purpose of seeking information must be disclosed.	Summons is not the first resort. Summons requires authorization by JC (Proper Officer). Information collection is not inquiry, hence, does not involve summons
2(j)	Information available on Common Portal must not be called for from taxpayer	Taxpayers must consider the basis for any information being called for, whether the same is not already available or the same needs to be specially prepared to assist the Officer. Unless there is a mandate, Officers are responsible to carry out their inquiry
2(k)	Summons must be specific and not generic	"Fishing inquiry" is not condoned by CBIC
2(l)	Generic clarifications *via* summons / letters not to be called for	Tax position evident in returns on Common Portal must be read and understood by Officers

2(m)	Reasons for issuing summons must be printed on the summons	Merely extracting the statutory provisions in summons shows non-application of mind or even void authorization of summons
2(n)	Verbal authorization is permitted but as an exception and must be followed by *post-facto* authorization in writing	Inquiry is confidential but never sudden. And when adjournment is granted for taxpayer to revert with documents, such inquiry cannot operate without written authorization
2(o)	Seeking piecemeal information is not encouraged	Information sought that is wholesale is not allowed, nor is seeking information in bits-and-parts. Summons must be specific (to the aspect of evasion) while still not being a 'fishing inquiry' hoping to land something
2(p)	Scanned copy of statement recorded must be uploaded on e-office of GST department	Avoiding furnishing copy of statement recorded extends time to retract, after documenting that (i) summons were attended (ii) statement was recorded and (iii) copy was not furnished to deponent
2(q1)	Swift conclusion is hallmark of intelligence based inquiry	Protracted inquiry can be challeged as a 'fishing inquiry'
2(q2)	Inquiry must culminate in notice or dropping of proceedings	Open-ended inquiry can be challenged as illegal inquiry

All grievances regarding inquiry (under Chapter XIV) are to be addressed to Pr. Commissioner of the Commissionerate or Pr. DG, DGGI of the Zone.

6.9 Reliability of statements on oath

Section 136 of the CGST Act specifies that any statement recorded under section 70, will be relied upon by a Court, only in the following five situations or circumstances, namely when person who has made the statement is:

- Dead
- Cannot be found
- Incapable of giving evidence
- Kept out of the way by adverse party and
- Presence cannot be obtained without an amount of delay or expense which Court considers unreasonable

In other words, if none of the above circumstances exist, the statements so recorded weaken as reliable evidence unless the said deponent can be subjected to a cross-examination.

- *In CCE, Meerut v. Parmarth Iron (P) Ltd. 2010 (260) ELT 514 (All.)* it was held thus:

  "17. We are, therefore, clearly of the opinion that there is no right, procedurally or substantively on in compliance with natural justice and fair play, to make available the witnesses whose statements were recorded, for cross examine before the reply to the show case notice is ***filed*** *and before adjudication commences. The exercise of cross-examination commences after proceedings for adjudication have commenced."*

- In State *of Kerala v. KT Shaduli AIR 1977 SC 1627* the Apex Court has held: *"It can hardly be disputed that cross-examination is one of the most efficacious methods of establishing the truth and exposing falsehoods".*

6.10 Retraction or alteration

Incorrect and false statements are not uncommon, even at the risk of prosecution under sections 193 and 228 of IPC. Statements deposed may also be incorrect due to anxiety about the way these proceedings are conducted or that the deponent may be intimidated. Making incorrect or false statements, for any reason, requires Proper Officer to submit a complaint before a Magistrate under section 190(1)(c) of Cr.PC which may not be always feasible during the course of an ongoing inquiry. This limitation must be well known to all concerned and care must be exercised to write to the Proper Officer in case:

- Copy of statement recorded is provided to deponent, to verify in calmer circumstances (but not after unreasonable delay) if there are any misstatements which need to be clarified or improve the expressions used in statements previously made;
- Copy of statement recorded is NOT provided to deponent, to request that a copy be furnished to clarify if there were any misstatements inadvertently recorded during summons proceedings; or
- A complete withdrawal of the statement made with the attendant consequences.

Statements made by deponent in summons proceedings may be challenged by the taxpayer (if notice was issued based on statements recorded in summons proceedings) that they are either unreliable for any number of reasons or that they are plainly false statements.

Note: 'Deponent' here refers to a supplier or customer or employee and taxpayer refers to the person charged with the liability to additional demand.

Although delay in retracting statements made on oath, may raise presumption of reliability of those statements in favour of Revenue, it is not necessarily the case, especially when the circumstances under which statements are recorded are not intimidating to the deponent or when other evidence corroborate these statements. Where third parties are summoned, their statements are also liable to be doubted by taxpayer for reasons such as any unfriendly relations that may be attributed to the deponent and taxpayer in question.

Statements recorded are not flawless evidence but only an aid to inquiry. There may be inducement or threat at work. The person recording statement may be under a misunderstanding or committing a mistake. The person may be unfriendly to the taxpayer and finds summons to be a vindictive opportunity. There can be any of these or some other reasons that may make the statement recorded lack probative value to rely upon in the inquiry.

6.11 Evidentiary value of statements

Section 101 of the Indian Evidence Act places 'burden of proof' on the person making any assertion that is to be relied upon in any proceedings. Except in respect of input tax credit in GST, section 155 places the burden of proof as to 'eligibility to credit' on the taxpayer, the authority of self-

assessment under section 59 raises a presumption in favour of correctness of taxpayer's determination of the assessment. As in other cases of presumption, it is a rebuttable presumption where the burden to unseat this presumption rests on the Revenue.

Statement on oath is admissible only when it is not disputed in terms of section 58 of the Indian Evidence Act which states that undisputed facts do not need to be proved. Documentary facts in books and accounts are also subject to challenge of their evidentiary value in terms of section 34 of the Indian Evidence Act.

Taxpayers should note that statements on oath are not *ipso facto* reliable unless there is no dispute or challenge to averments made by the deponent. It has been held in case of *State of Punjab v. Barkat Ram AIR 1962 SC 276* and again in case of *Illias v. CC AIR 1970 SC 1065* (decisions under Customs law applicable to GST proceedings as the nature of powers conferred under GST law are heavily drawn from those prevalent under Customs) that confessional statement made before a Customs officer is admissible as evidence in a trial and its contents left to the Magistrate to rely upon having due regard to other attendant facts and circumstances. A contrary view has been expressed in case of *Raja Ram Jaiswal v. State of Bihar AIR 1964 SC 828* in the context of Orissa and Bihar Excise Act, 1915, where the powers of the investigative Officer was found to be coextensive with those of a police officer. GST has cautiously extended coextensive powers to a very limited extent such that the ratio in Barkat Ram's decision applies to GST proceedings. (See also later discussion in *Ramesh Chandra Mehta decision* and now affirmed in *Tofan Singh v. State of TN by SC in 2020 in Cr.APL 152/2013*).

6.12 Show cause notice based on statements

Summons is a process in law to call upon a person to (i) give evidence or (ii) produce a document or any other thing, that may aid in inquiry but show cause notice is an altogether different process in law. The show cause notice is to set the law in motion about a liability under the law containing charges that a specific person is called upon to answer. Evidence or document or thing secured in summons proceedings neither obligates the Revenue to act upon it and issue the said notice nor rely upon it while issuing said notice.

Where such material is secured in summons proceedings and relied upon to support the charges made in the said notice, the same must be appended

and disclosed to taxpayer. Hence, material secured in summons proceedings and show cause notice DO NOT bear any immediate or direct correlation although the same is involved in furthering the inquiry underway.

Summons is not compulsory or essential for all inquiries or for notices demanding tax. But the definition of 'suppression' in section 74 makes summons proceedings very potent if the taxpayer summoned refuses to depose or deposes and makes false statements. Such evidence (not the deposition itself) could support the special circumstances required to issue notice under section 74. Summons has an important role, as an aid to the inquiry.

Show cause notice cannot be issued on the foundation of statements recorded in summons proceedings from one or more persons. Motive of deponent, unfavourable relations with taxpayer and other factors being open to challenge, support for allegations in show cause notice may deplete unless other 'clinching evidence' led out of statements recorded, are adduced to support the allegations in show cause notice.

It is important to carefully examine the extent to which statements recorded on oath support the allegations in the notice and whether any other corroborative evidence have been brought on record or is the notice standing merely on statements of deponents. This will guide the approach to be taken in rebuttal of allegations in the notice.

6.13 Conclusion about Summons

Summons is an important step in investigation and not the end of investigation. Summons must be issued with great circumspection only to corroborate results of investigation. Investigations must lead to confession in deposition. Deposition cannot dictate the course of investigations. Taxpayers must attend to summons proceedings with a sense of responsibility and cooperation to ensure that facts are made available to the Revenue and any deficient appreciation of facts are well supported so that investigations proceed in right earnest by all stakeholders.

Chapter 7
Access to Business Premises (Section 71)

7.1 Authority to access or visit taxpayer's premises

Access to business premises under section 71 contrasted with the responsibility of self-assessment placed on registered \persons under section 59, makes it abundantly clear that GST officers are *not permitted* to make routine visits to the registered person's place of business, by invoking powers under section 71. All provisions of the law operate and must be administered in harmony with each other. If section 59 states that *"every registered person shall self-assess the taxes payable under this Act"* then Proper Officer is NOT the Assessing Officer. And any intervention to verify the correctness of the self-assessment carried out by registered persons must be only in the manner permitted by Parliament, that is:

- Scrutiny of returns under section 61.
- Audit of books and records under section 65.
- Inspection of premises under section 67.

It is clear from the language in section 71 that *"authorized by the Proper Officer not below the rank of Joint Commissioner"* must grant prior authorization before any Authorized Officer or person gains access to the said place of business. However, where access is gained to the premises of a registered person, the further proceedings to be conducted are overlapping with sections 65, 66, 67 (discuss later). Further, the form and reasons for granting such authorization is not specified (as discussed in detail in the context of section 67) and if the power is ambiguous and without boundaries, it will be vitiated for being arbitrary.

When self-assessment is already concluded, unless there are valid reasons contained in the authorization granted, routine visits by Proper Officer will be directly in conflict with section 59 or for that matter section 65 or 67. It is interesting to note that there is no rule corresponding to section 71 and there is no Form in which such authorization is to be granted.

Where an authorization is somehow granted (by Officer of Joint Commissioner or higher rank) the 'access so gained' to the place of business will be guided by the 'provisions of law' under which such authorization is granted. It may be section 25 or section 65 or section 66 or section 67(12) or some other provision. *Therefore, 'access to premises' under section 71 is a 'subordinate provision' to such other 'primary provision' of the CGST Act as may be applicable.*

To view section 71 to be substantive provision would tantamount to arbitrary, unguided and sweeping powers being left with the Authorized Officer or person, where these powers overlap with those in section 61, 65 or 67 which tantamount to mistake by Legislature in creating powers under two different provisions of the law. Such an interpretation would be contrary to all known tenets of 'construction of statutes' which require that the entire legislation be harmoniously construed without power in one provision vested with one Proper Officer trespassing or entrenching into the powers in another provision vested with another officer. Such simultaneous and overlapping jurisdiction is found only in section 6(2) which permits Central and State GST departments enjoy overlapping jurisdiction but not overlap in their investigative areas.

Without any non-obstante clause, section 71 must operate subservient to other provisions as a machinery provision. To validate this construction, consider section 65 which addresses (i) authorization to select registered persons to be audited (ii) process and timelines for carrying out the audit (iii) completion of audit and issuance of report and (iv) authority to issue notice in respect of observations made. But there is no provision in section 65 that states that Proper Officer is authorized to access business premises of the registered person who is to be audited. Similarly, section 66 addresses the (i) circumstances when Special Auditors' appointment is justified (ii) scope and timelines for such exercise and (iii) outcome of such exercise. But there is no provision in section 66 that states that Special Auditor is authorized to access the business premises of the registered person.

Since the 'form of authorization' is prescribed under sections 25, 65 and 66 (and even for section 67), it would be superfluous, if yet another Form was to be prescribed in section 71. Therefore, section 71 must be admitted as a machinery provision to aide other provisions where access to business premises is warranted and deliberately placed by Parliament perhaps to avoid repetition. Section 71 is to be read harmoniously and not in derogation

of (i) section 59 and (ii) for the purposes of other provisions listed above, is a machinery provision and not a substantive provision granting yet another path to 'access' registered person and take a relook at self-assessment carried out.

7.2 Premises accessible

Places of business of 'registered person' alone can be accessed in terms of section 71. Access to premises of taxable person or any other person is permitted under section 67 [except Section 67(12) for test purchase] and access is implicit in proceedings under section 69. Therefore, the premises to be accessed under section 71 is limited to other provisions of State GST Act where such access is necessary to give effect to those proceedings.

7.3 Premises NOT to be accessed

Place of business is defined in section 2(85) of the CGST Act and all those places may be accessed provided such places are specified in the authorization so granted. Location of the supplier of services is defined in section 2(71) which extends to places that are NOT places of business. Care must be taken NOT to access those locations which are NOT within the scope of this definition of 'place of business'.

7.4 Routine visits to taxpayer's premises barred

Since 'authorization' is a pre-requisite to gain access to premises of the registered person, access in a 'routine' manner is barred in law. It must be taken note of that this truly ensures minimal physical interface with taxpayer and any interface is limited to specific provisions conferring jurisdiction to conduct specific proceedings only.

No amount of 'suspicion' is sufficient for the Proper Officer to trespass into the power of self-assessment granted by section 59. If there are 'reasons to believe' about any evasion of tax, section 67 grants exceptional powers. If there is requirement to 'verify correctness' of compliances, section 65 grants wide powers. Both these powers are left with Officers with necessary authority under section 5. But the jurisdictional Proper Officer empowered to grant registration, scrutinize returns and conduct best judgement assessment in exceptions, cannot also trespass into the domain of Audit Officers under section 65 and Intelligence / Enforcement Officers under section 67.

There is no overlapping jurisdiction granted in section 71. In fact, section 71 must be implemented without overlapping with the jurisdiction vested in section 65 or 67. This harmony is the mandate given by the Parliament and to assume overriding authority to jurisdictional Proper Officer over the same domain that is left for Audit Officers to exercise under 65 or for Intelligence / Enforcement Officers to exercise under section 67, would tantamount to exercising superior jurisdiction. This is not the scheme of the Act.

7.5 Special authorization by Joint Commissioner

What are the circumstances for grant of special authorization under section 71 by Joint Commissioner (or an higher rank Officer)?

- If there is any evasion of tax, then Joint Commissioner (or higher rank Officer) is empowered to grant authorization under section 67 and there is no need to invoke section 71 to gain access but the safeguard against misapplication of this power is contained in the need for 'reasons to believe' in evasion of tax in specific ways.
- If any detailed verification of compliances is required, then the Commissioner (or any delegate) is empowered to issue general or special order under section 65. Section 65 allows issuing such orders (to carry out audit) but it does not contain the authority to access business premises. It is here that section 71 can be pressed into service.
- If a special audit is required under section 66 and such auditor needs access to business premises, then section 66 takes care of issuing necessary directions but not the access. It is here that section 71 will come handy.

Within the overall scope and authority of jurisdictional Proper Officer, what can be the further possibility when the access to business premises be required? It seems that would be limited to physical verification of premises after grant of registration in exceptional cases.

Therefore, special authorization to be granted by Joint Commissioner cannot be beyond what is provided in other provisions of the law and such authorization cannot be 'non-specific' in the reasons for attempting to suspend the authority granted by Parliament to taxpayer under section 59.

7.6 Purpose of special authorization

Section 71 states that the Authorized Officer will have access to business premises of registered person (i) to inspect books of accounts, etc. and (ii) for the purposes of carrying out any "audit, scrutiny, verification and checks" which are:

- 'Audit' is defined in section 2(13) but be carried out by Proper Officer under section 65 and not 71
- 'Scrutiny' of returns is permitted under section 61 but without access to business premises
- 'Scrutiny' of premises is required under section 25, that does not involve inspecting books, etc
- 'Verification' of premises is required but it is akin to powers under section 65 or 66
- 'Checks' are involved in section 65 or 66 where not only business premises, but books also may be accessed.

It is clear that the broad nature of words used are guided 'what next' is permitted to be carried out once access is gained. Surely, section 71 cannot be derogatory to section 65, 66 or even 67 but only be in harmony with these provisions contained in the same law.

7.7 Effect of not prescribing 'Rule and Form' for special authorization

Government has prescribed the following rules and forms for authorization:

- Audit is authorized by internal order under section 65(1) but rule 101(2) prescribes Form GST ADT1
- Special audit is authorized by directions under rule 102(1) and prescribed in Form GST ADT3

Barring these, there is no other rule by which 'special authorization' can be issued by Joint Commissioner and without a rule and a form thereunder, and there are no limits specified regarding the circumstances when Joint Commissioner can issue special authorization but is completely open-ended.

Authority granted to a Delegate is illegal when there are no boundaries. Authority is excessive and arbitrary, not only when it is used in an arbitrary

manner but also when the possibility is undeniable. For section 71 to survive without being void for arbitrariness, It must be read to the limited extent to which books of accounts, etc are to be examined for the purposes of *"audit, scrutiny, verification and checks"*.

Without a rule and without a form, section 71 to the extent it does not overlap with the rule and form prescribed for section 65, 66 or 67, must be limited in its reach.

7.8 Nature of activities permitted during access

Only when access is authorized under section 71(1), person-in-charge is obliged to extend cooperation and this cooperation required under the 'primary provision' (refer above) in terms of which the 'secondary provision' under section 71 has been invoked.

Person-in-charge, may be the taxable person or person authorized to be in-charge of location or person present and found to be in-charge of location, is obliged to make available such information that is necessary to effectively carry out the mandate in the said 'authorization'.

Items listed in section 71(2) are illustrative and not exhaustive. Care must be taken that the nature of activities that are permitted during such access to premises are not limited to the language used in section 71 but must be gathered from the language of that provision under which the 'authorization' has been granted.

7.9 Duty to 'make available', limited in operation

A registered person whose books of accounts, etc., are accessed based on authorization granted to access business premises, is not required to answer questions akin to those mandated in section 70. Where access is gained to business premises and books of accounts, etc., are produced, the following further steps are NOT permitted:

- Carrying away those books of accounts, etc.
- Issuing instructions to prepare reconciliations and reports
- Issuing instructions to appear before Proper Officer's later
- Explain the basis for tax treatment applied
- Making demands for 'spot payment' of (alleged) dues.

7.10 Emergency access also barred

There is no authority in law to access premises even in emergencies without 'prior authorization'. All emergencies must find place in one of the 'primary provisions' that supports the use of powers under section 71 to access a place of business.

7.11 Access to undisclosed premises of registered persons

Where any place of business is undisclosed by registered person, access to such premises is only possible under section 67 and not under section 71. For this reason, it becomes evident that section 71 operates as a 'secondary provision' laying down the statutory basis for physical interface between Proper Officer and registered person(s).

7.12 Access to unregistered persons' premises

Where the taxable person is unregistered, access to place(s) of business of such persons must be gained in terms of the authority in some other primary provision such as section 22 for grant of registration or section 67 for inspection but not under section 71 directly.

7.13 Attempt to gain unlawful access to business premises

Whether the taxpayer is registered or not, access to business premises is permitted under respective provisions of law but not under section 71 directly. In any case, attempt to gain unlawful access to business premises must be met with a written request to refrain from availing powers that are not permitted in accordance with law. All further actions will then proceed only after a proper determination is made on this written request.

One would recall that there has been a practice in VAT regime of carrying out 'survey' of the market to find any dealers liable to be registered but have failed to obtain registration and discharge VAT dues. Section 71 does not authorize any such practice as it is applicable only to 'registered persons'.

It is important to ensure that safeguards in the law will not be listed as 'safeguards' but are still available in the way exceptional powers are granted with (i) prior authorization (ii) granted in specific circumstances and (ii) to carry out specific activities. Resisting misapplication of law is as much a part

of complying with the law as is seeking registration and discharging tax on self-assessment basis.

7.14 Conclusion about access to premises

It is a past practice that is no longer encouraged in GST where tax authorities visit taxpayer's premises to conduct surprise checks. Similarly, taxpayers are not permitted to visit tax office for any proceeding unless required to do so under section 67 or section 70 or section 73, 74 and 76 or such other provisions.

Registered taxpayers must be cordial even if it is to politely decline misapplication of this provision and where valid proceedings are pursued, full cooperation must be extended in furnishing the facts as available regarding the activities. Section 71 is not the substantive provision for investigation but itself a machinery provision feeding one aspect of 'access' to Authorized Officers discharge their duties under other substantive provisions of law.

Chapter 8
Illustrative Formats of Various Letters

Various aspects have been discussed in this Handbook and very often, it is stated that certain letters must be filed, or certain objections must be raised. To better explain those aspects, certain illustrations (in the form of draft letters) are provided in this Chapter, which may be referred to and pointers from these drafts may be considered while preparing letters and submissions after making necessary edits and including citation of judicial authorities to convey any point during departmental proceedings, namely:

Letter A – Request to intercepting officer to permit furnishing of security to release consignment

Letter B – Questioning the validity of notice or letter demanding discharge of liability

Letter C – Request to disclose authorization to conduct investigation vide letter or summons

Letter D – Request for provisional release of seized goods

Letter E – Request to furnish copy of documents seized during investigation

Letter F – Request to refrain from pursuing taxpayer to deposit dues without issuing valid notice

Letter G – Intimation of invalidity of summons issued

Letter H – Request to furnish copy of statement recorded during summons to confirm probative value

Letter I – Application under section 67(10) before replying to SCN issued after concluding investigation

Letter J – Request to avail option to pay 'redemption fine' in confiscation proceedings

Letter K – Intimation of decision to appeal to GSTAT and request to refrain from precipitative action

Letter L – Request to rectify mistake apparent on record in the adjudication or appellate order

Letter M – Request to unblock credit illegally blocked on account of reasons beyond rule 86A

Letter N – Request to furnish the basis on which investigation is initiated under section 67

Letter O – Request to furnish the basis on which investigation is initiated under section 71

Letter P – Request to withdraw simultaneous inquiry under 67 by Central and State Officers

Letter Q – Request to withdraw inquiry by Central Officers when enquiry concluded by State Officers.

LETTER A

REQUEST TO INTERCEPTING OFFICERS TO PERMIT FURNISHING OF SECURITY TO RELEASE CONSIGNMENT

To

The ……. of Central / State Tax

[Proper Officer Intercepting the consignment]

…….

Date:

Sub: Facility to furnish security under section 129(1)(c) – Request for

Ref: (a) Interception of conveyance on …….

(b) …..Name …….. (GSTIN……..) (Registered Person)

(c) Consignment vide Tax Invoice No…… dated ……

(d) EWB No…….. dated …….. valid upto ……..hrs.

(e) Other References, if any

This has reference to the above proceedings under section 129 of the Central GST Act, 2017, and State GST Act, 2017 or Integrated GST Act and GST (Compensation to States) Act, 2017) and Rules made thereunder. In this regard, registered person hereby confirms that:

a) No act of evasion of tax is involved or admitted and errors, if any, in documents accompanying consignment which are not in the nature of violation of requirements under section 68 of the CGST Act read with rule 138A of the CGST but are minor clerical errors and the facts can be ascertained from accompanying documents and from Common Portal;

b) Being the representative of owner of goods involved in the above consignment, facility in section 129(1)(c) to furnish security in Form GST MOV-08 as provided in *Circular No.*

41/15/2018-GST dated 13 Apr 2018 as amended by *Circular No. 49/23/2018-GST dated 21 Jun 2018*, equivalent to the amount determined under section 129(1) of the CGST Act is sought to be exercised;

c) Opportunity to explain discrepancy that appears to be noted is sought through Mr. …… (PAN / AADHAAR No……..) who is hereby authorized to appear and represent on behalf of the registered person; and

d) Consignment does not comprise of goods listed in *Notification No.: 27/2018-Central Tax dated 13 Jun 2018.*

For this act of kindness, the registered person is ever so grateful and accepts to furnish security in such form and manner for the amount determined under section 129(1) of the CGST Act within seven working days from the date of approval of the said facility along with any further restrictions as may be deemed necessary.

The registered person most humbly requests that all goods involved in the above consignment, cannot get the due care and attention by the person-in-charge of the conveyance for any longer without exposing them to the risk of damage due to exposure to the elements and unattended halting of the consignment at the place of interception of conveyance.

Identified by me: For …….. Name:…… (Registered Person) GSTIN…… Address:……..	Accepted by me: Name: …… Person authorized to accept provisional release

Further, in view of this application made before you under section 129(1)(c) penalty under section 129(1)(a) or (b) is not accepted in accordance with law and, no precipitative action under section 129(6) of the

CGST Act may be initiated against us. Notice required to be issued in accordance with law may be served on the person authorized above and pre-deposit of 25 per cent of the amount of penalty will be deposited immediately in order to prefer appeal before the First Appellate Authority under section 107(1) of the CGST Act and the SGST Act. No prejudicial action that may have the effect of abrogating our right to appeal may be initiated.

Kindly acknowledge receipt of this request and facility provided in section 129(1)(c) of the CGST Act and the SGST Act made applicable to Integrated GST Act and GST (Compensation to States) Act, be granted for which we remain obliged.

For ……..

Name:……

(Registered Person)

GSTIN…….

Address:……..

Note: Please Replace 'State' with Name of State/UT

LETTER B

QUESTIONING THE VALIDITY OF NOTICE OR LETTER DEMANDING DISCHARGE OF LIABILITY

To,

The …….. of Central Tax / State Tax

[Proper Officer Issuing the said Instructions]

……

Date……

Sir,

Sub: Your message / email / letter dated …… - reply to.

Ref: (a) ……..Name of Taxpayer……

(b) GSTIN ……..

(c) Your letter bearing DIN …… / NIL

We hereby acknowledge receipt of your subject communication on …….. demanding:

a)	Payment of CGST-SGST of Rs…… each
b)	Payment of IGST of Rs…….
c)	Payment of Cess of Rs……..
d)	Repayment of credit of CGST-SGST of Rs…… each
e)	Repayment of credit of IGST of Rs…….
f)	Repayment of credit of Cess of Rs……..
g)	Interest (not quantified); and
h)	Penalty (not quantified).

OR

We hereby acknowledge receipt of your subject communication on …….. regarding:

a)	……2A < 3B……;
b)	……1 <> 3B; and
c)	……

OR

a)	Calling for books of accounts; and
b)	……

In this regard, we bring to your kind attention that the subject communication does not specify the provision of Central GST Act and State GST Act under which these proceedings are initiated. As such we submit that there is a restriction against entertaining or responding to such communication and it is incumbent on taxpayers to confirm the provisions of law under which the proceedings are undertaken. This is explicit from section 160(2) of Central GST Act and State GST Act which reads as:

> ***"160. Assessment proceedings, etc., not to be invalid on certain grounds. —***
>
> *(1) ……..*
>
> *(2) The service of **any notice, order or communication** shall not be called in question, if the notice, order or communication, as the case may be, **has already been acted upon** by the person to whom it is issued or where such service **has not been called in question** at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication."*

It is evident from the above extract that any failure to question the nature of the proceedings results in forfeiture of the authority to call its validity into question in later proceedings. As such, we make this request for clarification regarding the nature of these proceedings.

Pending confirmation of the nature of proceedings, any amount demanded is entirely disputed and these proceedings are presumed to be adjourned *sine die*. Any further proceedings proposed, may kindly be

pursued in accordance with relevant provisions of Central GST Act by putting us at notice and enable us to submit our detailed objections on law and on facts.

Request you to kindly acknowledge receipt of this letter and oblige.

For ……..

Name:……

(Registered Person)

GSTIN…….

Address:……..

Note: Please Replace 'State' with Name of the State/UT

Copy to:

a) Joint Commissioner of Central Tax / State Tax

[Jurisdictional Supervisory Authority over the Proper Officer]

……Insert Address…..

LETTER C

REQUEST TO DISCLOSE AUTHORIZATION TO UNDERTAKE INVESTIGATION VIDE LETTER OR SUMMONS

To,

The ……. of Central Tax / State Tax

[Proper Officer Issuing the said Summons]

……

Date:

Sir,

Sub: Objections to notice / letter / summons dated …… – reg.

Ref: (a) …… Name……(GSTIN……) ('Registered Person')

(b) File No……..

(c) Inspection said to be conducted on …… (IF ANY)

This is with reference to notice / letter / summons calling for submission of books of accounts issued to M/s ……. having their place of business at …… and holding GSTIN ……. ('Registered Person') pursuant to proceedings issued under section (not specified) or section 67 of Central GST Act and State GST Act have been received by undersigned on or about……

In this regard, it is brought to your kind attention that proceedings under section 67(1)(a) of Central GST Act and State GST Act may be undertaken based on "reasons to believe" that pre-exist and pre-date the authorization granted in Form GST INS-01 (copy not available) in three specific situations, namely where the registered person:

a) Has suppressed supply or stock of taxable goods; or

b) Has claimed input tax credit beyond their entitlement; or

c) Has indulged in contravention of Act or Rules to evade tax.

Firstly, it is not forthcoming from the subject notice which of the above three situations furnishes the basis for invoking the exceptional powers contained in section 67 of Central GST Act and State GST Act. Secondly, from a perusal of the information required from the registered person in the subject notice, it appears to be routine verification which is akin to inquiry in audit under section 65 of Central GST Act and State GST Act. Thirdly, there is no provision in section 67 of Central GST Act and State GST Act that permits issuance of notice of any kind. Lastly, the authorization said to be granted in Form GST INS-01 stands extinguished by its exercise on the date when the inspection was carried out.

Further, from the provisions of section 67(1)(a) of Central GST Act and State GST Act, it is seen that it is not possible to routinely reach a conclusion that any of the situations listed therein are attracted. These "reasons to believe" are not mere instances where some clarity may be lacking in the documents filed or information reported by the registered person. The purpose of these "reasons to believe" is to supply jurisdiction forming the basis for invoking the powers under section 67(1) of Central GST Act and State GST Act and such powers are not to be exercised to carryout routine 'verification of correctness' of the information filed in annual returns or reconciliation statement. Reference may be had to subject notice where copies of ledgers, invoices, credit notes, etc., are being called for which are not within the terms of section 67 of Central GST Act and STATE GST Act.

For these reasons, the registered person is already prejudiced when the exceptional powers of section 67 of Central GST Act and State GST Act stand invoked when none of the situations that are necessary to be present for the grant of authorization in Form GST INS-01 have been shown to exist. ***As such, section 67(1)(a) of Central GST Act and State GST Act could not have been pressed into service unless any of the three situations listed in the statute are found to exist (i) to the satisfaction of the Proper Officer not below the rank of Joint Commissioner and (ii) such satisfaction being recorded in writing on the files, which is a public record and is open to be called for under the Right to Information Act, 2005*** and for this reason, safeguards in section 165 of Cr.PC are made applicable to inspection-cum-search proceedings *vide* section 67(10) of Central GST Act and State GST Act

To this end, it is respectfully submitted that the entire proceeding is questionable, and the subject notice is without authority of law. For this

reason, attention is invited to section 160(2) of Central GST Act and State GST Act:

> ***"160. Assessment proceedings, etc., not to be invalid on certain grounds. —***
>
> *(1) ……..*
>
> *(2) The service of **any notice, order or communication** shall not be called in question, if the notice, order, or communication, as the case may be, **has already been acted upon** by the person to whom it is issued or where such service **has not been called in question** at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication."*
>
> Reliance is placed on the following judicial authorities in support of the above:
>
> a)…….List case laws, if any……..
>
> b)…… List case laws, if any ……..

Relief Sought

It is evident from the above extracts that any failure to question the nature of the proceedings results in forfeiture of the authority to call into question its validity in later proceedings. As such, without addressing the prejudice caused to registered person by invoking powers of inspection without satisfying the preconditions listed in section 67(1)(a) of Central GST Act and State GST Act, the subject proceedings need to be adjourned *sin e die* at least if not, dropped in toto to prevent miscarriage of justice apparent in these proceedings which suffer from want of jurisdiction.

Request you to kindly acknowledge receipt of this letter and oblige.

For ……..

Name:……

(Registered Person)

GSTIN……

Address:……..

Note: Please Replace 'State' with Name of the State/UT

Copy to:

a) Additional Commissioner of State Taxes or Additional Commissioner of Central Taxes

……..

……..

b) Commissioner of State Taxes / Principal Commissioner of Central Taxes

……..

……..

LETTER D

REQUEST FOR PROVISIONAL RELEASE OF SEIZED GOODS

To

The …… of Central / State Tax

[Proper Officer Conducting Investigation]

……..

Date: …….

Sub: Provisional release of seized articles under section 67 of Central GST Act – request for.

Ref: (a) Inspection authorization in Form GST INS-01 no ……. dated ……..

(b) Seizure order in Form GST INS-02 no……. dated ……

(c) …..Name…….. (GSTIN……..)

(d) Other References, if any

This has reference to above proceedings under section 67 of Central GST Act, 2017 and State GST Act, 2017 and Rules made thereunder. In this regard, the registered person most humbly submits that:

a) Subject proceedings underway are based on mere suspicion about the likely evasion of tax or fraudulent claim of refund or involving goods liable to confiscation or secreting documents, books or things, which are not admitted by the registered person and vehemently denied without prejudice to the challenge to underlying 'reasons to believe' that these proceedings are justified.

b) The seizure order passed identifies and records all those goods and other records that are subject to seizure under impugned

proceedings are such that it is no longer necessary to continue to remain under physical control and custody of the Revenue authorities.

c) Provisional release of goods and other records covered by the said seizure order will not cause any prejudice to the ongoing investigation or adversely affect the interests of Revenue.

d) Continued retention of the goods and other records covered by said seizure order will cause irreparable prejudice to the registered person.

e) Balance of convenience is in favour of grant of approval for provisional release of goods and other records covered by said seizure order and in is in accordance with law.

For the foregoing reasons, the registered person most humbly prays that "goods and other records covered by said seizure order be provisionally released" and handed over to Mr …….. (PAN / AADHAAR No……..) who is hereby authorized to accept the said provisional release on behalf of the registered person.

For this act of kindness, the registered person is ever so grateful and executes a Bond in Form GST INS-04 under rule 140 of Central GST Rules bearing no. ……. and accepts to furnish bank guarantee for an amount not less than Rs……. (Rupees …….. only) within seven working days from the date of approval for such provisional release along with any further restrictions as may be deemed necessary.

The Registered person most humbly submits a further request that no proceedings under rule 141 of Central GST Rules read with *S.No.17 of Notification No. 27/2018-Central Tax dated 13th Jun 2018* be initiated earlier than 30 days from the date of your approval for such provisional release as the same would cause irreparable loss and prejudice that this request application seeks to avoid.

Identified by me: For ……..	Accepted by me:

Name:…… (Registered Person) GSTIN…… Address:……..	Name: …… Person authorized to accept provisional release

Kindly acknowledge receipt of this request for provisional release and grant necessary approval at the earliest in the interests of justice, for which we remain obliged.

For ……..

Name:……

(Registered Person)

GSTIN……

Address:……..

Note: Please Replace 'State' with Name of the State/UT

LETTER E

REQUEST TO FURNISH COPIES OF DOCUMENTS SEIZED DURING INVESTIGATION

To,

The Director General of GST Investigation (Central Taxes) / Additional Commissioner of STATE Taxes (Enforcement)

……..

Date: …….

Sub: Application to Proper Officer in terms of Section 67(5) of Central GST Act and State GST Act – reg.

Ref: (a) Inspection authorization in Form GST INS-01 No ……. dated ……..

(b) Seizure order in Form GST INS-02 No……. dated ……

(c) …..Name…….. (GSTIN……..)

(d) Investigation File Ref. No……

(e) Letter dated …….. seeking provisional release

(f) SCN dated ……. served on ……..

(g) Other References, if any

This has reference to above proceedings under section 67 of Central GST Act, 2017 and State GST Act, 2017 and Rules made thereunder. In this regard, the registered person recognizes that section 67(5) permits grant of copies of documents seized in terms of 67(2) of Central GST Act and State GST Act.

In view of the requirement to file Income-tax returns / conducting statutory audit for the Financial Year ……., there is an urgent requirement to collect copies of books and documents pursuant to the inspection conducted on ……and certain documents, books and

things came to be seized vide order of seizure in Form GST INS-02 dated ……..

Kindly acknowledge receipt of this application under section 67(5) of Central GST Act and State GST Act made applicable to these proceedings and grant our request as above at the earliest in the interests of justice, for which we remain obliged.

For ……..

Name:……

(Registered Person)

GSTIN……

Address:……..

Note: Please Replace 'State' with Name of the State/UT

LETTER F

REQUEST TO REFRAIN FROM PURSUING THE TAXPAYER TO DEPOSIT DUES WITHOUT ISSUING VALID NOTICE

To,

The ……of Central Tax / State Tax

O/o Director General of GST Investigation (Central Taxes) / Additional Commissioner of State Taxes (Enforcement)

……..

Date:…….

Sir,

Sub: Confirmation of final position in the matter of ongoing investigation under S.67 of Central /State GST Act – Regarding

Ref: (a) …..Name…….. (GSTIN……..) (Registered Person)

(b) Inspection authorization in Form GST INS-01 No ……. dated ……..

(c) Seizure order in Form GST INS-02 No……. dated …….

(d) Investigation File Ref. No……

(e) Letter dated …….. seeking provisional release

(f) Summons dated …….

(g) Letter of clarification dated …… in respect of statement recorded on oath on ……..in pursuance of the summons

(h) Other References, if any

This has reference to above proceedings under section 67 of Central GST Act, 2017 and State GST Act, 2017 and Rules made thereunder. In this

regard, the registered person has learnt that the following matters involving liability are under investigation:

a) Output tax on forward charge payable in respect of ……..

b) Tax payable on inward supplies liable on reverse charge basis in respect of …….

c) Reversal of input tax credit availed in respect of …….

d) Repayment of refund sanctioned in respect of …….

e) Interest on above, as applicable

f) Penalty on account of above, as applicable.

In this regard, the registered person submits this letter confirming that the above liability as informed during various interactions both, in person and over telephone, are not tenable according to his understanding of the extant provisions of law. Further, any instance of final liability devolving on the registered person would be a matter of interpretation of the applicable provisions of law, rules, notification and other authoritative pronouncements of which neither the registered person nor the Officers involved in the said investigation are final authorities to make such determination and the implications of making this confirmation of final position in the matters (listed above) under investigation and the due process of law that its entails are understood by the registered person and there is no requirement to be explained further or persuade the directors, employees or other persons to accept liability in respect any or all of the said matters. The registered person acknowledges the efforts of the Officers explaining the extant legal provisions involved in the said matters and is grateful for the same.

As such, **it is most respectfully submitted that without insisting any more to admit any liability, further proceedings in accordance with law be pursued and the registered person confirms that no director, employee or other person is authorized to accept any liability on its behalf and all authorization issued are rescinded except to the extent of furnishing factual information and providing any documents, duly requested for the purposes of the ongoing investigation**. The registered person assures fullest cooperation in the matter of further proceedings that may ensue in accordance with law.

Kindly acknowledge receipt of this letter of confirmation and grant our request as above in the interests of justice, for which we remain obliged.

For ……..

Name:…….

(Registered Person)

GSTIN…….

Address:……..

Note: Please Replace 'State' with Name of the State/UT

Copy to:

a) Principal Chief Commissioner of Central Taxes

……

…….

b) Jurisdictional Central / State GST Officer

…….Address……

LETTER G

INTIMATION OF INVALIDITY OF SUMMONS ISSUED

To,

The ……of Central Tax / State Taxes

O/o …… Commissioner of ……..

……

Date:……

Sir,

Sub: Summons ……..dated……issued under section 70 of Central GST Act and State GST Act – objections to.

Ref: (a) ……..(Deponent)

(b) File No……

(c) Date to enter appearance on……..

(d) Referring Assignment No. / Case No……

Undersigned is in receipt of above referred summons under section 70 of Central GST Act and State GST Act in respect of investigation said to be underway in respect of M/s …… / other persons (Not Specified). Pursuant thereto, following documents are called for:

a) Books of accounts;

b) Invoices, vouchers and ledger accounts; and

c) ……

In this regard, undersigned hastens to bring to your kind attention the requirement in section 70 of Central GST Act and State GST Act that the duty of the undersigned is to "produce a document or any other thing" and the relevant provisions are extracted:

> *"**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.*
>
> *……"*

It is clear from the foregoing that calling for books of accounts, etc., (listed above) does not meet the situations permitted to invoke the powers vested under section 70 of Central GST Act and State GST Act. Reference to "a" document would be limited to something specific but from the perusal of the documents called for, it does not appear to be anything specific but much wider. This is NOT permitted in law and to do so would be to travel beyond the boundaries of section 70 of Central GST Act and State GST Act which is sought to be invoked.

Further, it may be noted that the authority to summon any person is only in a case where an "inquiry" is underway. Attention is invited to the meaning of the word's 'inquiry' compared to 'enquiry' as can be noted from the following instructive words:

> *"the traditional distinction between the verbs 'enquire' and 'inquire' is that enquire is to be used for general senses of 'ask', while **inquire is reserved for uses meaning 'make a formal investigation'**".*
>
> *Baleshwar Bagarti v. Bhagirathi Dass [(1909) ILR 35 Cal 701 at 713]*

Where 'investigation' is taken up, powers under section 70 of Central GST Act and State GST Act become available to assist the investigative agency or officer during the said investigation. It may be noted that:

a) The registered person is registered with Central / State administration as can be seen from the certificate of registration dated……..;

b) All returns have been submitted online in accordance with law and are up to date;

c) All admitted dues have been discharged; and

d) Any other plea……..

However, the above referred summons has been issued by your office which is neither the office of Intelligence Commissionerate of Central Taxes nor the office of Preventive / Enforcement wing of State Taxes / Central Taxes, which are empowered to invoke the powers of investigation under section 67 of Central GST and State GST Act and conduct inquiry. Proceedings under any other section of the law would be in direct conflict with section 59 of Central GST Act and State GST Act.

OR

Further, based on a careful consideration of the documents requested, the current proceedings are clearly 'inquisitorial' and appear to be in direct conflict with section 59 of Central GST Act and State GST Act. Parliament in its wisdom has extended limited authority to challenge the self-assessment made by any registered person and in case of any doubts about the correctness of such self-assessment falls within the purview of section 61 or, 65 or 67, action may be taken under section 73 or 74 of the Central GST Act and State GST Act.

As such, the current proceedings said to be underway are NOT in the nature of an 'inquiry' but something in the nature of 'enquiry' akin to scrutiny or verification of the compliances. Powers under section 70 of Central GST Act and State GST Act are not available to such proceedings. The undersigned begs to stand corrected should the facts, which are not clearly forthcoming from the said summons, be otherwise and will most respectfully comply in accordance with law.

If the facts as understood were rightly so, to permit these proceedings to continue, despite the above stated incompleteness affecting its validity, **would render the "due process" laid down in law "superfluous, unnecessary and nugatory**" and this is impermissible and a violation of the express provisions of the Central GST Act and State GST Act. Clearly, for the purposes of invoking these exceptional powers and including them within the operation of Code of Civil Procedure along with attaching the consequences under sections 193 and 228 of Indian Penal Code, the Legislature has devoted the wisdom and attention to "prescribe the process" that must be followed. This "procedure prescribed" is not an empty formality but a diligent law-making effort to meet the high standards of the "principles of natural justice" that need to be enjoined in these proceedings. Where any

proceeding under Central GST Act and State GST Act proceeds in complete disregard to the "procedure established in law", that would be illegal.

Further, even if bona fide administrative intentions are at work, it is imperative that Legislative wisdom in circumscribing exceptional powers to summon must not be permitted to be misapplied. Whatever may be the reasons, unless those reasons operate within the boundaries laid down by Legislature, they must be held to be arbitrary and for that reason must be actively disobeyed, to which the law extends its full might and protection.

For these reasons, it appears that the above referred summons suffers from want of jurisdiction on two counts:

a) Documents (listed earlier) that have been called for, are beyond the scope of section 70 of Central GST Act and State GST Act; and

b) Officer calling for the said documents is NOT the Proper Officer empowered to exercise powers under section 70 of Central GST Act and State GST Act.

These exceptional powers may have been invoked without taking into consideration the necessary ingredients that must pre-exist to exercise the necessary authority to invoke the said powers under section 70 of Central GST Act and State GST Act.

Further, the undersigned is also barred in law from entertaining any proceedings that are invalid and this may be noted from the clear embargo placed upon the undersigned in section 160(2) of Central GST Act and State GST Act which reads as:

"160. Assessment proceedings, etc., not to be invalid on certain grounds. — (1) ……..

(2) The service of ***any notice, order or communication*** *shall not be called in question, if the notice, order or communication, as the case may be,* ***has already been acted upon*** *by the person to whom it is issued or where such service* ***has not been called in question*** *at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication."*

It is evident from the above extracts that any failure to question the nature of the proceedings results in forfeiture of the authority to call into

question its validity in subsequent proceedings. As such, without addressing the prejudice caused to the registered person / deponent by invoking the powers of inspection without satisfying the preconditions stated in section 70 of Central GST Act and State GST Act, the subject proceedings are liable to be dropped in toto to prevent miscarriage of justice apparent in these proceedings which suffer from want of jurisdiction.

Request you to kindly acknowledge receipt of this letter and oblige.

For ……..

Name:……

(Registered Person)

GSTIN……

Address:……..

Note: Please Replace 'State' with Name of the State/UT

Copy to:

a) Additional Commissioner of Central Tax

……

……

b) Commissioner of Commercial Taxes

……

……

LETTER H

REQUEST TO FURNISH COPY OF STATEMENT RECORDED DURING SUMMONS TO AFFIRM PROBATIVE VALUE

To,

The …… ('Proper Officer')

[Proper Officer Conducting Investigation]

O/o……..insert authority……..

Date:…….

Sir,

Sub: Deposition on ……..in summons proceedings under section 70 of Central GST Act and State GST Act – request for

Ref: (a) ……. Name of the Deponent

(b) …. Name of the Registered Person

(c) ……. GSTIN……..

(d) Case file ref. no……

This is with reference to written deposition on …….. after administering oath, where this deponent was directed to appear and give evidence in the matter of some proceedings, the nature and associated details were not shared with deponent, said to be underway against above referred registered person. The deponent entered appearance before the …….. ('Proper Officer') at the time and place and on the date specified in the summons issued under section 70 of Central GST Act and State GST Act.

Documents directed to be produced for purposes of the said proceedings and listed in the summons were submitted in …… [boxes / files] to the said Proper Officer. Further, the deposition was recorded [by hand / on

computer] in a question-and-answer method and lasted about …….. hours on the said date.

As the nature of these questions were not informed prior to entering appearance, the deponent was required instantly to recollect and answer those questions, without the assistance to call and confer with any other person(s) who may have been directly connected with matters connected relating to those questions or to access concerned files and documents to refresh his memory. While answers provided are believed to be true to the best of deponent's knowledge and belief, the deponent certainly was anxious about the proceedings perhaps due to (i) language employed in the summons itself to describe the nature of these proceedings (ii) conduct of the Proper Officer and others present during proceedings (iii) location and duration of this deposition; and (iv) style of questioning suggesting serious violation of GST law by registered person and so on.

Whether all of these may be due to inexperience and mere perception of the deponent is undeniable and certainly not improbable. Now, probative value of the answers provided in deposition may greatly improve if a copy of the said deposition were provided for review and confirmation by the deponent in calmer settings and circumstances including after due verification by (i) conference with persons more directly knowledgeable, if any, with the facts (and not the conclusions or understanding of deponent) and / or (ii) by comparison with files and documents, if any, connected with those questions.

The deponent is an …… (mention qualification) …….and is responsible for …… (mention nature of duties) …. which does not entail familiarity or understanding of the tax laws. However, several questions in these proceedings fell beyond the domain of the deponent's experience or expertise.

The deponent adds that the entire proceedings caused great anxiety and could have impaired clear thinking although Proper Officer's reassurances were impeached by jarring line of questioning that the deponent was required to immediately recollect and respond with great certainty. After such a long and tiresome proceedings on the said date, the deponent was looking forward to seeing the end of these proceedings as early as possible, and this motivation exasperates the quality and reliability of answers provided.

As such, the deponent makes this request for a copy of the deposition recorded and duly signed on the said date to review and confirm or correct the answers provided. In the absence of this step towards confirmation of the answers deposed, the deponent is unable to assure that those answers provided may not be free from doubt, while being truthful all the same.

This request applies to the written deposition recorded on the date referred above and also summons issued earlier on ……, …….and ……. as well as other submissions taken on record on the files of the Proper Officer. This request is submitted [in person at the reception counter / by registered post] along with a copy via email from deponent's email …….. to the Proper Officer's email ……

Thanking you

……

NAME OF Deponent……

Copy to:

a) Principal Chief Commissioner of Central Taxes / State Tax

……

LETTER I

APPLICATION UNDER SECTION 67(10) BEFORE REPLYING TO SCN ISSUED AFTER CONCLUSION OF THE INVESTIGATION

To,

The Director General of GST Investigation (Central Taxes) / Additional Commissioner of State Taxes (Enforcement)

……..

Date:……..

Sub: Application to Commissioner in terms of S.165(5) of Cr.PC – Regarding

Ref: (a) Inspection authorization in GST INS-01 no ……. dated ……..

(b) Seizure order in Form GST INS-02 no……. dated ……

(c) …..Name…….. (GSTIN……..)

(d) Investigation File Ref. No……

(e) Letter dated …….. seeking provisional release

(f) SCN dated ……. served on ……..

(g) Other references, if any

This has reference to the above stated proceedings under section 67 of Central GST Act and State GST Act and Rules made thereunder. In this regard, the registered person recognizes that section 67(10) of Central-State GST Act makes provisions of section of Cr.PC applicable to these proceedings subject to the modification in section 165(5) namely the word 'Magistrate' shall be substituted with 'Commissioner'.

In terms of proceedings bearing file reference number ……., carried out vide authorization in GST INS-01 referred above under section 67 of Central GST Act and State GST Act, the

registered person makes this 'application' as required in section 165(5) of Cr.PC to get:

a) Copy of Form GST INS-01 which was NOT left with the registered person on the date of inspection but said to have been produced at the time of inspection containing 'reasons to believe' that pre-existed and pre-dated the said inspection on ……. It is placed on record that due to the sudden inspection and the anxiety and stress surrounding the tone and tenor of the proceedings, the registered person does not recollect having seen the said authorization much less registered the notings contained therein.

b) Confirm as to whether there were more authorization issued in addition to the one referred to above.

c) Copy of file notings which were put up before the Proper Officer for grant of authorization under section 67(1) to conduct the said 'inspection' and thereafter escalate this inspection to 'search' under section 67(2) of Central and State GST Act.

d) Copy of seizure report in Form GST INS-02 in respect of the articles seized, duly signed by the authorized Officers and panch witnesses to examine whether these were (i) goods liable to confiscation under section 130 of Central-STATE GST Act or (ii) documents, books or things that are considered useful in any proceedings "that were secreted" including identification of the location where these articles were found by the authorized Officers.

e) Copy of prohibition order in Form GST INS-03.

f) Copy of file notings in response to the application dated …… seeking provisional release of the seized articles.

g) Copy of all further file notings with respect to the investigation including but not limited to seeking extension of time for issuance of show cause notice which came to be issued only on …….

h) Copy of file noting in respect of authorization to initiate proceedings under section 67(8) of Central/State GST Act read

with rule 141 of Central/ State GST Rules and Notification No. 27/2018-*Central Tax* dated 28 Jun 2018.

i) Opportunity to cross-examine following persons:

- Investigating Officer
- Witness
- Expert witness, if any; and

j) Others, if any ……

The registered person hereby makes this express request for grant of opportunity to verify the documents referred to in the show cause notice dated …….. placed at Annexure …….. as 'relied upon documents' and to cross-examine the authorized officers who conducted the inspection-cum-search proceedings along with persons whose statements and depositions have also been cited as 'relied upon' in the show cause notice, to establish their *bona fides* which are ex facie unsubstantiated, suspect and contrary to facts as known and understood by registered person.

Kindly acknowledge receipt of this application under section165(5) of Cr.PC made applicable to these proceedings and grant our request as above at the earliest in the interests of justice, for which we remain obliged.

For ……..

Name:……

(Registered Person)

GSTIN…….

Address:……..

Note: Please Replace 'State' with Name of the State/UT

LETTER J

REQUEST TO AVAIL OPTION TO PAY 'REDEMPTION FINE' IN CONFISCATION PROCEEDINGS

To

The ……. of Central / State Tax

[Proper Officer Adjudicating SCN for Confiscation]

……..

Date:……..

Sub: Option to pay fine under section 130(2) of Central GST Act – Request for.

Ref: (a) Show cause notice in Form GST DRC-01 dated ……..

(b) Proceedings under section 67 of Central GST Act vide case no……..

or

(a) Show cause notice in Form GST MOV 10 dated ……..

(b) Proceedings under section 129(6) of Central GST Act vide Form GST MOV 9 no… dated ……

(c) …..Name…….. (GSTIN……..) ('Registered Person')

(d) Other references, if any

This has reference to the above stated proceedings under section ….. of Central GST Act, 2017 and State GST Act, 2017 or Integrated GST Act and GST (Compensation to States) Act, 2017 and Rules made thereunder. In this regard, the registered person acknowledges receipt of the show cause notice on …….

WITHOUT PREJUDICE to any other claim, reply, response or objection in respect of proceedings above referred, the registered person

hereby, most humbly, submits this request that option to pay fine under section 130(2) of Central GST Act be allowed for the reasons THAT:

a) Subject proceedings underway are based on mere suspicion about likely evasion of tax involving goods liable to confiscation, which are not admitted by the registered person and vehemently denied without prejudice to the challenge to underlying 'reasons to believe' that these proceedings are justified;

b) Provisional release is requested vide letter dated …… along with justification for the same;

c) Confiscation of goods stated to be liable to confiscation under these proceedings, will cause irreparable prejudice to the registered person; and

d) Balance of convenience is in favour of grant of option to pay penalty-in-lieu of confiscation and in is in accordance with law.

For this act of kindness, the registered person is ever so grateful.

Kindly acknowledge receipt of this letter of request, for which we shall remain obliged.

For ……..

Name:……

(Registered Person)

GSTIN…….

Address:……..

Note: Please Replace 'State' with Name of the State/UT

LETTER K

INTIMATION OF DECISION TO APPEAL TO GSTAT AND REQUEST TO REFRAIN FROM PRECIPITATIVE ACTION

To,

The …… of Central Tax / State Tax

……

……

Date:…….

Sir/Madam,

Sub: Intimation to abstain from any precipitative action in the matter of Order passed by First Appellate Authority / Revisionary Authority in view of the decision of the appellant / registered person therein to prefer appeal before the Appellate Tribunal under section 112(1) of the Central GST Act and State GST Act – Regarding

Ref: (a) …….. (Appellant)

(b) ……GSTIN……..

(c) Order of the First Appellate Authority No……. dated……passed under section 107 of Central GST Act and State GST Act

or

(c) Order of Revisionary Authority under section 108 of the Central GST Act and State GST Act

This is to inform you that in the matter of Order passed by …… and being aggrieved thereby, the appellant / registered person therein has decided to prefer an appeal before the Appellate Tribunal. Pending the same, this intimation-cum-undertaking is submitted to take the

same on record and refrain from taking or keep in abeyance all precipitative action pursuant to the said Order passed by First Appellate Authority / REVISIONARY AUTHORITY no……..dated…….

Pursuant to the above, additional pre-deposit of the disputed demand pursuant to Order under section 107(11) / 108(1) in accordance with section 112(8) of Central GST Act as amended by Finance (No.2) Act, 2024 has been deposited in accordance with the instructions in para 4 circular 224/18/2024-GST dated 11 Jul 2024 and DRC 3A is filed on…….[PLEASE FILL ARN OF DRC 3A FILED ON GSTN] to the extent payments have been made *via* DRC 3 earlier. It may be noted that pre-deposit *via* Form GST DRC3 is NOT permitted under extant instructions, and the same may not be insisted upon.

In view of compliance with instructions in the said circular, registration on Common Portal are valid and current, all ongoing compliance are up-to-date, full participation in appellate proceedings up to this stage and APPELLANT / REGISTERED PERSON keen to avail full consideration of the imminent merits of the case when it comes up for consideration before the GST Appellate Tribunal, no further precipitative action is warranted or justified.

Kindly take this intimation-cum-undertaking on record and oblige.

For ……..

Name:……

(Appellant)

GSTIN…….(IF ANY)

Address:……..

Note: Please Replace ‘State’ with Name of the State/UT

LETTER L

REQUEST TO RECTIFY MISTAKE APPARENT ON RECORD IN ADJUDICATION OR APPELLATE ORDER

To,

The ……..of Central Tax / State Tax

[Proper Officer passing the Order]

……

Date:…….

Sir,

Sub: Application for rectification under S.161 of Central/State GST Act in respect of order passed under section ……. – Request for

Ref: (a) Name ……..('Registered Person')

(b) GSTIN of the registered person

(c) Order No……. dated ……served on ……

(d) ……Reference of application / facts submitted…… dated ……

This has reference to the order of adjudication referred to above that came to be passed under section…….. of Central GST Act and State GST Act (order of adjudication) that came to be served on …….. In this regard, we beg to submit before you that there are mistakes apparent on the face of the record that deserve your urgent attention by this application for rectification under section 161 of Central GST Act and State GST Act.

Para ……. of the said order of adjudication states as follows:

"……."

Whereas facts submitted by the undersigned vide application …….. dated…….. clearly set out the following:

a) the facts as can be seen from the foregoing Para show that……[describe in simple language the nature of the error apparent]…….,

b) ……Any other plea ……..

In view of the foregoing variance, the order of adjudication appears to be erroneous on facts and the undersigned seeks your kind intervention to rectify this mistake apparent in accordance with section 161 of the Central GST Act and State GST Act by passing such modified orders as may be deemed fit. To this end, following documents are submitted in support of the factual assertion that may be verified:

a) Application originally filed on …….

b) Submissions made during the course of proceedings …….

c) …….

Request you to kindly acknowledge receipt of this application for rectification under section 161 of Central-State GST Act and oblige.

For ……..

Name:……

(Appellant)

GSTIN…….

Address:……..

Note: Please Replace 'State' with name of the State/UT

Enclosed: as above

Note: Original order which is sought to be rectified should not be returned to the adjudicating authority, please retain it. Rectified order, if any, may be reissued by the adjudicating authority (delete this para in final application).

LETTER M

REQUEST TO UNBLOCK CREDIT ILLEGALLY BLOCKED ON ACCOUNT OF REASONS BEYOND RULE 86A

To,

The……of Central Tax / State Tax

……..

Date:……

Sir,

Sub: Application for removal of anomalies and deficiencies in authorization said to be issued under the powers vested under Rule 86A of Central GST Rules and State GST Rules and to withdraw the same for want of jurisdiction – Regarding

Ref: (a) ……Name Of Taxpayer…… ('Applicant')

(b) GSTIN……..

(c) Blocking of input tax credit vide ……..

This is with reference to input tax credit blocked under rule 86A of Central GST Rules and State GST Rules but for reasons that the amount of Rs……claimed as input tax credit is allegedly inadmissible as under:

a) Section 16(4) to the said extent of Central GST Act and STATE GST Act;

b) Section 17(2) to the said extent of Central GST Act and STATE GST Act;

c) Any other reason stated for blocking (other than rule 86A).

which was executed on Common Portal on or about ….(insert date)….. by …… of Central Tax / State Tax, ……

With reference to the above, following anomalies and deficiencies are noted which affect the validity and impair the entire proceedings for want of jurisdiction that is sought to be exercised thereby, namely:

1. Rule 86A of Central GST Rules and State GST Rules permits the Commissioner or an officer duly authorized having 'reasons to believe' that **credit of input tax available on electronic credit ledger** has been fraudulently availed or is ineligible in as much as:

   a) Invoice is issued by non-existent supplier or location;

   b) Invoice is issued without supply of goods or services;

   c) **Without Depositing** tax said to be charged on such invoice;

   d) Recipient of said credit, that is, this Applicant, is **non-existent** or the business premises is not registered location;

   e) Invoice is not prescribed document to claim said credit.

2. It is evident that only when any of the above five situations are shown to exist and any one or more of them form the 'reasons to believe' can the exceptional powers under rule 86A of Central GST Rules and State GST Rules be invoked.

3. However, it is stated that these exceptional powers are invoked on account of belated filing of returns in Form GSTR 3B for the tax period(s) ……. which is beyond the time permitted for claiming input tax credit under section 16(4) of Central GST Act and State GST Act. The reasons stated for blocking credit are not listed in rule 86A of Central GST Rules and State GST Rules. This, in itself, is a misapplication of the exceptional powers and its exercise without jurisdiction.

   Or

   Explain other grounds on which the credit is blocked…….

4. Further, as to whether the applicant is in violation of section 16(4) of Central GST Act and State GST Act cannot be summarily and unilaterally decided by Proper Officer but due to

the civil consequences the applicant is exposed to suffer, this question cannot be decided without putting the applicant at notice in accordance with the procedures established by Central GST Act and State GST Act for demanding reversal of input tax credit. The applicant places on record that no such notice has been issued which is pending adjudication for the determination of inadmissibility of such credit.

5. Recording of 'reasons to believe' is a measure that prevents misuse of the exceptional powers. And these reasons cannot be in the mind of the Proper Officer but be recorded on the files which are public record, accessible under Right to Information Act.

6. In admitting that credit is blocked for reasons of alleged non-compliance with requirements of section 16(4) of Central GST Act and State GST Act, is itself an admission that this proceeding to block credit is beyond the scope of rule 86A of Central GST Rules and State GST Rules. Attention is invited to section 58 of Indian Evidence Act which states that undisputed facts do not require proof. And where the admitted reasons (for blocking credit) are not the ones listed in rule 86A, the exercise of exceptional powers in this rule are rendered illegal and contrary to the mandate in law.

7. The ingredients necessary to invoke these powers are so rare and exceptional that they cannot be lightly exercised as is evident in the fact that routine books of accounts and financial statements are being called for, under these proceedings. The…….of Central Tax / State Tax ……could not have exercised these exceptional powers unilaterally and the 'reasons to believe' should have been endorsed by you as the superior officer supervising the activities of subordinate Officers within the Division. These 'reasons to believe' must be shared by you and, in fact, become your reasons for authorizing the blocking of credit which is now shown to be contrary to the scope of rule 86A of Central GST Rules and State GST Rules.

8. CBICs Guidelines for *"disallowing debit of electronic credit ledger under Rule 86A"* dated 2 Nov 2021 deal with blocking of

credit as a matter of routine by proper officers. Present actions of the Proper Officer are certainly not malicious, but even *bona fide* actions are not permitted to be carried out bypassing the law. CBICs instructions are issued exactly for this purpose – to ensure correct implementation of the law – and action contrary to CBICs Instructions are *ex facie* illegal and contrary to the Government's own interpretation of the application of rule 86A of Central GST Rules and State GST Rules. Whatever may be the reasons for executive action, unless those reasons operate within the boundaries laid down by Legislature, they must be held to be arbitrary and for that reason must be actively disobeyed, to which the law extends its full might and protection.

9. Such summary action of blocking credit for alleged non-compliance with section 16(4) Central GST Act and State GST Act by invoking powers under rule 86A of Central GST Act and State GST Act is clearly without necessary ingredients to support the exercise of such extreme powers, it is only appropriate that these anomalies and deficiencies be brought to attention of the Proper Officer to remedy any inadvertent exercise of inapplicable provisions of the law.

10. When no appeal under section 107(1) of Central GST Act and State GST Act lies against the arbitrary blocking of credit under rule 86A of Central GST Rules and State GST Rules, it is but essential that the taxable person comes before the very authority who has exercised the said power to do justice and resolve the anomalies and deficiencies present.

11. However, if somehow these proceedings – of continuing to keep the said amount of input tax credit blocked – were permitted to continue, despite the above stated deficiencies and anomalies affecting its validity, it **would render the "due process" laid down in law "superfluous, unnecessary and nugatory"** and this is wholly impermissible and a gross violation of the express words of the Central GST Act and State GST Act. Clearly, for purposes of permitting intervention to check any evasion of tax, the Legislature has thought it necessary to "prescribe the process" that must not be bypassed. This "procedure prescribed" is not an empty formality but a diligent law-making

effort to meets the highest standards in adhering to "principles of natural justice" enjoined in these proceedings. Where any proceeding under Central GST Act and State GST Act proceeds in disregard to the "procedure established in law", that would be illegal and the applicant is called upon by section 160(2) of Central GST Act and State GST Act to "refrain from entertaining" and to "call into question" the said proceeding, by raising objections at the earliest opportunity. Adverting to the said section 160(2) of Central GST Act and State GST Act, it states:

"160. Assessment proceedings, etc., not to be invalid on certain grounds. —(1) …….

(2) The service of ***any notice, order or communication*** *shall not be called in question, if the notice, order, or communication, as the case may be,* ***has already been acted upon*** *by the person to whom it is issued or where such service* ***has not been called in question*** *at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication."*

This provision places an embargo on the applicant from entertaining any proceeding that are not in accordance with law and whose validity is doubtful as in the instant case where, for reasons stated above, suffers for want of jurisdiction to invoke section 67 of Central GST Act and State GST Act. Except by resolving these anomalies and deficiencies, irreparable prejudice will be caused to Applicant if current proceedings were permitted to continue.

Reliance is placed on the following judicial authorities in support of the above:

a) ……List case laws, if any……

b) ……List case laws, if any……

Relief Sought

In view of the foregoing, the applicant makes this application requesting that the anomalies and deficiencies in exercising exception powers under rule 86A of Central GST Rules and State GST Rules and blocking credit of Rs……for alleged non-compliance with section 16(4) Central GST Act and State GST Act, be addressed in accordance with law and unless any material is available on record that support exercise of these exceptional powers, the **said amount of input tax credit be unblocked immediately to remedy the irreparable prejudice caused to Applicant**. And pending disposal of this application, all further proceedings attendant to the matter of alleged non-compliance with section 16(4) Central GST Act and State GST Act be treated as adjourned *sine die*.

For ……..

Name:……

(Appellant)

GSTIN……

Address:……..

Note: Please Replace 'State' with name of the State/UT

Copy to:

a) Commissioner of Central Tax / State Tax

……

……

b) Joint Commissioner of Central Tax / State Tax

……

……

LETTER N

REQUEST TO FURNISH THE BASIS ON WHICH INVESTIGATION IS INITIATED UNDER SECTION 67

To,

The……of Central Tax / State Tax

……..

Date:……

Sir,

Sub: Application for removal of anomalies and deficiencies in authorization being issued under powers vested under section 67 Central GST Act and State GST Act and to withdraw the same for want of jurisdiction – reg.

Ref: (a) ……Name of taxpayer……. ('Applicant')

(b) GSTIN……..

(c) Inspection of premises of applicant on …….

This has reference to certain authorizations being issued under section 67 of Central GST Act and State GST Act, which have come to be executed ……..by ……of Central Tax / State Tax …….. In this regard, following anomalies and deficiencies are noted which affect the validity and impair the entire proceedings for want of jurisdiction that is sought to be exercised thereby, namely:

1. Section 67(1)(a) of Central GST Act and State GST Act permits grant of authorization to conduct inspection of the place of business of taxable person where the Additional Commissioner has 'reasons to believe' that the said taxable person:

   a) Has suppressed supply or stock of taxable goods; or

   b) Has claimed input tax credit beyond their entitlement; or

c) Has indulged in contravention of Act or Rules to evade tax.

2. However, the said authorization (copy enclosed as Exhibit .....) does not state which of the above three specific clauses have been invoked to support the exercise of jurisdiction under section 67 of Central GST Act and State GST Act. It may be seen that in the said authorization, all the above clauses of section 67(1)(a) of Central GST Act and State GST Act have been reproduced without stating specifically which of them are attracted or whether all of them are attracted in the instant case along with the basis thereof.

3. Further, section 67(1)(a) of Central GST Act and State GST Act requires that the Proper Officer must have 'reasons to believe' that it is necessary that the powers thereunder be invoked else the ends of justice will not be served. But in the instant case, by reciting the provisions of the law, the necessary 'reasons to believe' are assumed to exist and powers under section 67(1)(a) of Central GST Act and State GST Act are pressed into service. It is not sufficient to recite the provisions of section 67(1)(a) of Central GST Act and State GST Act which only contains the exhaustive list of instances when these powers may be exercised. Mere listing the entire provisions of section 67(1)(a) of Central GST Act and State GST Act, indicates that there are no specific 'reasons to believe' to invoke these exceptional powers.

4. Merely reproducing the entire provision of section 67(1)(a) of Central GST Act and State GST Act does not confer authority in the absence of a clear statement about the basis on which Proper Officer has reached this conclusion and to record the existence of circumstances the compel Revenue to exercise its extraneously special powers in section 67 of Central GST Act and State GST Act.

5. Unless the 'reasons to believe' show a plausible instance that a Court would find that the extreme powers of inspection have been rightly invoked, the said authorization would violate section 59 of Central GST Act and State GST Act. On a perusal of the

proceedings recorded on ……by the said ……of Central Tax / State Tax ……., it is noted that routine books and records are being called for (copy enclosed as Exhibit **.....**) which are completely contrary to the scope and extent of powers authorized by section 67(1)(a) of Central GST Act and State GST Act. It is unambiguous that none of the specific clauses in section 67(1) of Central GST Act and State GST Act appear to have been attracted by the applicant. And if there were any, there would have been no reason to conceal those reasons. It may be noted that all these reasons would anyway need to be disclosed when application under section 165 of Criminal Procedure Code would be made in due course in accordance with section 67(10) of Central GST Act and State GST Act.

6. Further, the said authorization granted invokes even more extreme powers of search and seizure in terms of section 67(2) of Central GST Act and State GST Act. It may be noted that the 'reasons to believe' that inspection is warranted are not the same as the 'reasons to believe' that search and seizure is justified. Attention is invited to the language used in section 67(2) of Central GST Act and State GST Act which states that, **either goods liable to confiscation or documents or books or things of the taxable person "are secreted in any place"**. Without any incremental reasons to justify search-cum-seizure that are far more than reasons to only justify 'inspection' must be shown to exist. From the said authorization there is no mention of the 'additional reasons to believe' that any such articles are believed by Proper Officer to be "secreted". Without any prior information that any such articles are believed to be "secreted", grant of authorization is violative of section 67(2) of Central GST Act and State GST Act. Authorizing search and seizure without 'additional reasons to believe' also suffer for want of jurisdiction and exasperate applicant's position causing serious infraction of law.

7. From the language in the said authorization, it is clear that there was no prior knowledge that any articles are "secreted":

*"…….. I hereby authorize and require you to search the above premise with such assistance as may be necessary, **and if any goods or documents** and / or other things relevant to the proceedings under the Act **are found**, to seize and produce the same forthwith before me for further action under the Act and rules made thereunder."*

Not only was there no prior knowledge but there was no confidence even that there might be certain such articles that "are secreted" at the said premises. To irreverently inspect premises of taxable person is violative of taxpayer's rights but to extend the inspection into a search-cum-seizure authorization is not even permitted by the very section that is sought to be invoked in these proceedings.

8. A quick reference to the authentic format of Form GST INS-01 appended to rule 139(1) of Central GST Rules and State GST Rules, it manifests that all these safeguards are clearly provided. However, the authorization issued was not in conformity with the prescribed format which was mandatory. While issuing the above authorization, the powers under section 67(1) and 67(2) of Central GST Act and State GST Act appear to have already been exceeded and the entire proceedings are tainted.

9. As such, the above authorization cautions with the following words:

*"Any attempt on the part of the person to mislead, tamper with the evidence, **refusal to answer the questions** relevant to inspection / search operations, **making of false statement or providing false evidence** is punishable with imprisonment….."*

These words are also contrary to section 67 and appear to borrow words from section 70 of Central GST Act and State GST Act. Investigation that requires inspection or search-cum-seizure are emergency powers that are not in the nature of routine audit of books and records under section 65 of Central GST Act and State GST Act. In so doing, the above authorization has travelled completely beyond the scope of section 67 of Central GST Act and State GST Act. The

ingredients necessary to invoke these powers are so rare and exceptional that they cannot be lightly exercised as is evident in the fact that routine books of accounts and financial statements are being called for, under these proceedings. Reliance is placed on the instructive words of Privy Counsel which has laid down these instructive words in *Nazir Ahmad v. King Emperor* AIR 1936 PC 253 that:

"When a statute requires a thing to be done in a particular manner, ***it must be done in that manner or not at all****."*

10. Further, the above authorization is issued to be *"valid up to ……..."* Authorization issued under section 67(1) or under section 67(2) of Central GST Act and State GST Act do not have such extended validity. And being an authorization that is granted for "a one-time use only" basis, as soon as the Officers exit from the premises, the authorization granted stands extinguished by exercise. Issuing such 'standing authorization' is also contrary to law. Further, even when *bona fide* administrative intentions are at work, it is imperative that the legislative wisdom in circumscribing exceptional powers must not be permitted to be misapplied. Reliance is placed on the decision of *Sakal Papers (P) Ltd & Ors. v. UoI* AIR 1962 SC 305 which instructs:

"Legitimacy of the result intended to be achieved does not necessarily imply that every means to achieve it is permissible; ***for even if the end is desirable and permissible, the means employed must not transgress the limits laid down*** *by the Constitution…."*

11. Whatever may be the reasons, unless those reasons operate within the boundaries laid down by Legislature, they must be held to be arbitrary and for that reason must be actively disobeyed, to which the law extends its full might and protection. Reliance is placed on the following observations of the court *EP Royappa v. State of Tamil Nadu* AIR 1974 SC 555:

"From a positivistic point of view, equality is antithetic to arbitrariness. In fact, ***equality and arbitrariness are sworn enemies;*** *one belongs to the rule of law in a republic while the*

other, to the whim and caprice of an absolute monarch. ***Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment****. They require that State action must be based on valent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality.* ***Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would: amount to mala fide exercise of power*** *and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact, the latter comprehends the former."*

12. Further, the documents collected by the said ……of Central Tax / State Tax…….. as well as the further information sought to be submitted suffers for want of jurisdiction on two counts:

    a) Financial statements collected are already submitted along with Reconciliation Statement in Form GSTR 9C appended to Annual Returns filed in Form GSTR-9 for the relevant years; and

    b) Seeking preparation of *"……."* is beyond the mandate to maintain such trial balance under section 35 of Central GST Act and State GST Act.

    Such exceptional powers appear to have been invoked without taking into consideration the necessary ingredients that must pre-exist and pre-date the grant of authorization to invoke the powers under section 67 of Central GST Act and State GST Act.

13. When the above authorization grants wide powers of inspection which appear to be without the necessary ingredients to support the exercise of such extreme powers, it is only appropriate that

these anomalies and deficiencies be brought to the attention of the Proper Officer to remedy any inadvertent exercise of inapplicable provisions of the law.

14. When no appeal under section 107(1) of Central GST Act and State GST Act lies against the grant of authorization, it is but essential that the taxable person come before the very authority who has granted the above authorization to do justice and resolve the anomalies and deficiencies present.

15. However, if somehow these proceedings were permitted to continue, despite the above stated incompleteness affecting its validity, it **would render the "due process" laid down in law "superfluous, unnecessary and nugatory"** and this is wholly impermissible and a gross violation of the express words of Central GST Act and State GST Act. Clearly, for purposes of permitting intervention to check any evasion of tax, the Legislature has thought it necessary to "prescribe the process" that must not be bypassed. This "procedure prescribed" is not an empty formality but a diligent law-making effort to meets the highest standards in adhering to "principles of natural justice" enjoined in these proceedings. Where any proceeding under of Central GST Act and State GST Act proceeds in disregard to the "procedure established in law", that would be illegal and the Applicant is called upon by section 160(2) of Central GST Act and State GST Act to "refrain from entertaining" and to "call into question" the said proceeding, by raising objections at the earliest opportunity. Adverting to the said section 160(2) of Central GST Act and State GST Act, it states:

"160. Assessment proceedings, etc., not to be invalid on certain grounds. — (1) ……. *(2) The service of* ***any notice, order or communication*** *shall not be called in question, if the notice, order, or communication, as the case may be,* ***has already been acted upon*** *by the person to whom it is issued or where such service* ***has not been called in question*** *at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication."*

This provision places an embargo on the applicant from being subjected to any proceeding that are not in accordance with law and whose validity is doubtful as in the instant case where, for reasons stated above, suffers for want of jurisdiction to invoke section 67 of Central GST Act and State GST Act. Except by resolving these anomalies and deficiencies, irreparable prejudice will be caused to Applicant if current proceedings were permitted to continue.

Reliance is placed on the following judicial authorities in support of the above:

c) …….List case laws, if any……..

d) …….List case laws, if any……..

Relief Sought

In view of the foregoing, the applicant makes this application that the anomalies and deficiencies in the above authorization granted, be addressed in accordance with law and where any material is available on record that support exercise of these exceptional powers of inspection under section 67(1)(a) of Central GST Act and State GST Act, only then is the Applicant obliged to submit documents requested, provided they are germane to the point(s) of evasion that pre-exit and pre-date the said authorization. **To this end, the applicant requests that the copy of authorization in Form GST INS-01 that ought to have been granted, prior to date of inspection of business premises on ……., under section 67(1) of Central GST Act and State GST Act be furnished at the earliest to establish the validity of these proceedings and for the applicant to attend to the same immediately.** And pending disposal of this application, the proceedings initiated must be treated as adjourned *sine die*.

For ……..

Name:……

(Appellant)

GSTIN…….

Address……..

Note: Please Replace 'State' with name of the State/UT

Copy to:

a) Commissioner of Central Tax / STATE Tax

……

……

b) Joint Commissioner of Central Tax / STATE Tax

……

……

LETTER O

REQUEST TO INFORM BASIS ON WHICH PROCEEDINGS ARE INITIATED UNDER SECTION 71

To,

The……of Central Tax / State Tax

……..

Date:……..

Sir,

Sub: Application for removal of anomalies and deficiencies in authorization said to be issued to initiate proceedings under section 71 of Central GST Act and State GST Act and to withdraw the same for want of jurisdiction – reg.

Ref: (a) ……Name of taxpayer…….. ('Applicant')

(b) GSTIN……..

(c) Calling for books of accounts and other records without authorization as per law dated…….

This is with reference to the above referred Notice dated …….appears to be pursuant to authorization issued under section 71 of Central GST Act and State GST Act. In this regard, Applicant submits the following for your consideration:

a) Section 71 of Central GST Act and State GST Act does not authorize by itself the issuance of any Notice, it merely lays down the "circumstances" when an authorized Officer may gain access to business premises of a registered person. As section 71 requires authorization and any authorization previously initiated under section 67 are inapplicable and insufficient to

avail the powers vested in the said section 71 of Central GST Act and State GST Act;

b) Pursuant to this section 71, there is no rule prescribed to guide the Proper Officer unlike rule 139 of Central GST Rules and State GST Rules, exercise of powers under section 71 of Central GST Act and State GST Act is rendered arbitrary and for this reason illegal;

c) Without a rule and without any form prescribed, reusing Form GST INS-01 prescribed for purposes of another section 67 does not serve the ends of section 71 of Central GST Act and State GST Act and brings the two sections in direct conflict with each other. This is contrary to the very law sought to be administered;

d) Without yet another authorization being issued, above referred Notice under section 71 of Central GST Act and State GST Act is *ex facie* illegal and suffers for want of jurisdiction;

e) The regime requiring self-assessment of tax under section 59 of Central GST Act and State GST Act cannot be unsettled by invoking exceptional powers in law.

Reliance is placed on the following judicial authorities in support of the above averments :

a) …….List case laws, if any……..

b) …….List case laws, if any……..

In the absence of remedy of appeal to the applicant under section 107 of Central GST Act and State GST Act against the issuance of above referred Notice, there is an inescapable expectation that no prejudice be caused to the Applicant's rights at the threshold in these proceedings. **To this end, the applicant seeks your indulgence to prevent prejudice by invoking exceptional jurisdiction to issue notice under section 71 in the absence of any 'evasion of tax'.** The applicant further prays that any further requirement for information or documents be initiated strictly in accordance with law.

For ……..

Name:……

(Appellant)

GSTIN…….

Address:……..

Note: Please Replace 'State' with name of the State/UT

Copy to:

a) Commissioner of Central Tax / State Tax

……

……

b) Joint Commissioner of Central Tax / State Tax

……

……

LETTER P

REQUEST TO WITHDRAW SIMULTANEOUS INQUIRY UNDER 67 BY CENTRAL AND STATE OFFICERS

"WITHOUT PREJUDICE"

To,

The Additional Director General of GST Intelligence

Directorate General of GST Intelligence

……..Zonal Unit

……..

For information to:

The Additional Commissioner of STATE Taxes (Enforcement)

…… Zone

……

Through,

The Senior Intelligence Officer

O/o The Additional Director General of GST Intelligence

Directorate General of GST Intelligence

……..Zonal Unit

……..

Through,

The Deputy Commissioner of STATE Taxes (Enf…)

…… Zone

……

INSERT DATE

Madam / Sir,

Sub: Intimation about simultaneous exercise of jurisdiction under section 67 of CGST Act by SIO, Directorate General of GST Intelligence, …… Zonal Unit, Government of India along with counterpart DCCT-Enforcement (…..),……Zone, STATE Tax Department, Government of STATE – reg.

Ref: (a) ……..(P) Ltd. ('Registered Person')

(b) GSTIN ……..

(c) Summons under section 70 of Central GST Act dated ……..

(d) CBIC-DIN: ……

(e) Ref. No: Adcom/Enf…..Z/……/INS-……/…….

(f) Tax period involved ……. to ……

This is with reference to above referred summons issued under section 70 to Registered Person to enter appearance on ……pursuant to investigation under section 67 of Central GST Act by Shri……, Id. Senior Intelligence Officer ('SIO') of Directorate General of GST Intelligence, …….Zonal Unit ('DGGI-xZU'), Bangalore. In this regard, undersigned brings to your kind attention that proceedings under section 67 read with section 70 of Central GST Act have already been initiated by Id. Deputy Commissioner of STATE Taxes ('DCCT'), Enforcement (….), …….Zone,…….. *vide* above referred authorization issued by The Additional Commissioner of STATE Taxes, …….Zone, ……..

Attention is invited to provisions of section 6 of Central GST Act which read as follows:

"6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.—

(1) *Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.*

(2) Subject to the conditions specified in the notification issued under sub-section (1),––

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may

be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."

In view of the foregoing statutory embargo, it is most respectfully submitted that **simultaneous exercise of jurisdiction by Central and State GST department functionaries is precluded by law and no further interaction may be expected from Registered Person** pending redressal of this essential question of jurisdiction, that is, whether DGGI-xZU will exercise jurisdiction or CTD, ……..Zone, ……will exercise jurisdiction under section 67 of Central GST Act.

Further, it is placed on record that Registered Person is engaged in *bona fide* business activities, details whereof are updated on Common Portal regularly. It is the position of Registered Person that no payment of tax or other sum can be made without following due process in the Central GST Act. **As such, without determination of the authority who is to exercise jurisdiction under section 67 of Central GST Act in these proceedings, this investigation would be rendered *non est* and without authority of law.** And where the transactions are forthcoming in contemporaneous records of taxpayer and duly reported on Common Portal, even with authorization, no authority avails in law to invoke exceptional powers in section 67 of Central GST Act. Jurisdiction is an essential question that goes to the root of these proceedings and as such nothing remains if jurisdiction is not validity exercised. And this essential question is justiciable in a Court of competent jurisdiction.

Further, Registered Person reserves right to call into question, the validity of this investigation in terms of section 160(2) read with section 67(1)(a) of Central GST Act which remains to be agitated before whoever is

eventually determined to be the Proper Officer to validity exercise authority, should these proceedings be continued as per law. Reliance is placed on CIT v. Scindia Steam Navigation Co. Ltd. (1962) 1 SCR 788, Apex Court held that:

"…it is well settled that no mandamus will be issued ***unless the applicant had made a distinct demand on the appropriate authorities*** *for the very reliefs which he seeks to enforce by mandamus* ***and that had been refused.****".*

RELIEF SOUGHT

For the foregoing reasons, this intimation about simultaneous exercise of jurisdiction under section 67 of Central GST Act be redressed at the earliest in order to give fruition to these proceedings. And pending disposal of this application, these proceedings be kept in abeyance. Copy of this application is also made to the Proper Officer, STATE tax department, ……. Zone, …….. for their information and necessary action.

Request you to kindly take the above on record and acknowledge receipt of the same. And for this act of kindness, undersigned remains obliged forever.

for **…….(P) Ltd.**

……..

Smt……..

Authorized Signatory

GSTIN: ……..

…….

……..

LETTER Q

REQUEST TO WITHDRAW INQUIRY BY CENTRAL OFFICERS WHEN ENQUIRY CONCLUDED BY STATE OFFICERS.

"WITHOUT PREJUDICE"

To,

The Additional Director General of GST Intelligence

Directorate General of GST Intelligence

……..Zonal Unit

……

Through,

The Senior Intelligence Officer

O/o The Additional Director General of GST Intelligence

Directorate General of GST Intelligence

……..Zonal Unit

……

INSERT DATE

Madam / Sir,

Sub: Intimation about simultaneous exercise of jurisdiction under section 67 of CGST Act by SIO, Directorate General of GST Intelligence, …….Zonal Unit, Bangalore, Government of India along with counterpart JCCT (Admin), DGSTO-x, ……, Government of STATE – reg.

Ref: (a) ……(P) Ltd. ('Registered Person')

(b) GSTIN ……..

(c) File No. DGGI/INT/INTL/……../2024-…..

(d) Tax period involved ……. to ……

This is with reference to summons dated ……issued by ld. Senior Intelligence Officer, Directorate General of GST Intelligence, ……..Zonal Unit, Bangalore ("DGGI-xZU") directing Registered Person to submit the following information:

"1. Details of projects executed under ……..

2. Details of project wise GST paid on ……...along with workings from Jul 2017 to till date

3. Sales register and Purchase register and GSTR3B workings from ……...to ……."

In this regard, undersigned has been instructed to bring to your kind attention that:

1. Registered Person is assessed on the files of……under administrative oversight of ld. Joint Commissioner of STATE Taxes, ……., Commercial Tax Department, …….("JCCTx"").

2. Further, detailed on-premises audit has been conducted under section 65 of Central GST Act in respect of assignments issued as follows:

Tax period	Assignment No. and date	Outcome of audit *
2017-18	…….	SCN issued……
2018-19	…….	ADT2 issued…..
2019-20	…….	SCN issued……
2020-21	…….	ADT2 issued…..
2021-22	…….	SCN issued……
2022-23	…….	Ongoing……
2023-24	…….	Ongoing……

** copies of documents listed are enclosed.*

3. All documents have been submitted to JCCTx in respect of above audit assignments issued which continue to remain in possession of the Proper Officer.

4. Information directed to be submitted overlap squarely with that already in possession of JCCTx. Attention is invited to provisions of section 6 of Central GST Act which read as follows:

"6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.— *(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.*

(2) Subject to the conditions specified in the notification issued under sub-section (1),–––

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."

5. Without prejudice to the limitation applicable under section 75(10), all records required *vide* summons as referred above, being in possession of JCCTx, and in certain years, the records and visit-based audit having already been concluded, the proceedings sought to be initiated by DGGI-xZU under section 67 read with section 70 is contrary to the mandate in section 6(2) of Central GST Act.

6. To entertain the view that JCCTx has omitted to examine matters that DGGI-xZU proposes to inquire into would be presumptuous and an affront to the thoroughness of the nature and quality of audit conducted or underway.

7. In view of the foregoing statutory embargo, it is most respectfully submitted that **simultaneous exercise of jurisdiction by Central and State GST department functionaries is precluded by law and unless the specific area of omission by JCCTx is disclosed, the proceedings under section 67 read with section 70 of Central GST Act would be without jurisdiction.**

8. DIN generated (verified on esanchar.cbic.gov.in) does not indicate whether Proper Officer not below the rank of Joint Commissioner has issued authorization to SIO under section 67 in order to validly invoke exceptional powers under section 70 of Central GST Act.

9. Attention is invited to CBIC *Instruction 1/2023-24-GST (Inv.) dated 30 Mar 2024* which states at para 2(b) that:

   *"(b) Each investigation **must be initiated only after the approval of the (Pr.) Commissioner**, except in the following situations where the **prior written approval of the zonal (Pr.) Chief Commissioner shall be required if investigation is to be initiated and action to be taken in a case falling under any of the following four categories**, namely case involving –*

   i. matters of interpretation seeking to levy tax/ duty on any sector/commodity/ service for the first time, whether in Central Excise or GST;

   or

ii. big industrial house and major multinational corporations; *or*

iii. sensitive matters or matters with national implications; or

iv. matters which are already before GST Council.

In all of above four categories of cases, the concerned CGST field formation should also collect details regarding the prevalent trade practices and nature of transactions carried out from the stakeholders. The implications / impact of such matter should be studied so as to have adequate justification for initiating investigation and taking action."

It is placed on record that Registered Person is a public listed company and has been in business since ……..It currently has a market capitalization in excess of Rs…….crores.

10. Further attention is invited to para 2(h) of the above-mentioned CBIC instructions which reads as:

"(h) In ***initiating investigation with respect to a listed company*** *or PSU or Corporation or Govt Dept./agency or an Authority established by law, or seeking details (that are record-based and/or are reflected in statutory books of account or filings) from them,* ***the practice to be adopted by the CGST field formation should be of initially addressing official letters*** *(instead of summons) to the designated officer of such entity* ***(detailing the reasons for investigation, and the legal provisions therefor) and requesting the submission of the relevant specified details*** *in a reasonable time period which should be mentioned in the letter. Divergence from this practice at the initial stage must be backed by written reasons."*

In the absence of any such letter being addressed, directing persons available on-premises to themselves issue a letter-cum-undertaking appears to be operate beyond the purview of the above instructions of CBIC.

11. Any authorization to invoke exceptional powers under section 67 to discharge functions under Chapter XIV of Central GST Act that would be issued in 2024 covering ……to ……would be

contrary to judicial authorities on the limited nature and purpose in law.

12. With JCCTx having already occupied all tax periods covered by summons as referred above, and audit under section 65 read with section 2(13) being far greater and more inclusive in scope than inspection under section 67 of Central GST Act which is limited only to 'evasion of tax', proposed proceedings are ousted from jurisdiction by operation of section 6(2)(b) of Central GST Act. Reliance is placed on the instructive words of Apex Court in Sakal Papers (P) Ltd & Ors. v. UoI AIR 1962 SC 305 wherein it was held that:

"Legitimacy of the result intended to be achieved does not necessarily imply that every means to achieve it is permissible; ***for even if the end is desirable and permissible, the means employed must not transgress the limits laid down*** *by the Constitution…."*

13. Further, it is placed on record that Registered Person is engaged in *bona fide* business activities, details whereof are updated on Common Portal regularly. It is the position of Registered Person that no payment of tax or other sum can be made without following due process in the Central GST Act. **As such, with jurisdiction sought to be excerised under section 67 of Central GST Act having already been either exercised and proceedings underway in certain tax periods or exhausted by exercise in certain other tax periods, respectively, this inquiry is rendered *non est* and without authority of law.** And where the transactions are forthcoming in contemporaneous records of taxpayer and duly reported on Common Portal, even with authorization, no authority avails in law to invoke exceptional powers in section 67 of Central GST Act. Jurisdiction is an essential question that goes to the root of these proceedings and as such nothing remains if jurisdiction is not validity exercised.

RELIEF SOUGHT

For the foregoing reasons, this intimation about simultaneous exercise of jurisdiction under section 67 of Central GST Act be redressed at the

earliest in order to give fruition to these proceedings. And pending disposal of this application, these proceedings be kept in abeyance. Copy of this application is also made to the Proper Officer, CTD, South Zone, Bangalore for their information and necessary action.

Request you to kindly take the above on record and acknowledge receipt of the same. And for this act of kindness, undersigned remains obliged forever.

for **.....(P) Ltd.**

……..

Smt……..

Authorized Signatory

GSTIN: ……..

…….

…….

Copy to:

a) The Joint Commissioner of STATE Taxes (Admin)
DGSTO-x
……
……

b) The Assistant Commissioner of STATE Taxes (……)
DGSTO-x
……
……

Chapter 9
Instructions Referred - CBIC

1. *Instruction No. 1/2020-21 [GST Investigation/ F. No. GST/ Inv/ DGOV Reference/20-21]Dated 2-2-2021* [Section 67 of the CGST Act - Inspection, Search and Seizure - Power of - Instructions/ Guidelines regarding procedure to be followed during search operation.]

2. *Instruction No. 2/2021-22 [GST-Investigation] dated 22-9-2021* [Section 73, read with section 74 of the CGST Act - Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts - Issuance of show cause notice in time bound manner.]

3. *Instruction No. 01/2022-23 (GST-INV) dated 25-05-2022* - Deposit of tax during the course of search, inspection or investigation

4. *Instruction No. 2/2022-23 (GST-Investigation) dated 17-8-2022* - Guidelines for arrest and bail in relation to offences punishable under the CGST Act, 2017.

5. *Instruction 3/2022-23 (GST-Investigation) dated 17-8-2022* - Guidelines on issuance of summons under section 70 of the Central Goods & Services Tax Act, 2017

6. *Instruction No. 04/2022-23 [GST-Inv.] dated 01-09-2022* - Guidelines for launching of prosecution under the Central Goods & Services Tax Act, 2017

7. *Instruction No. 1/2023-24-GST (inv.) dated 30-3-2024* - Guidelines for CGST field formations in maintaining ease of doing business while engaging in investigation with regular taxpayers

8. *CBEC-20/16/05/2021–GST/359* dated *23rd February 2021*. - Guidelines for provisional attachment of property under section 83 of the CGST Act

9. *CBEC-20/16/05/2021-GST/1552* dated *2nd November 2021* - Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules - Reg. *vide*.

10. *Instruction No.2/2022-23 [GST-Inv.] dated 17th August 2022* - Guidelines for arrest and bail in relation to offences punishable under the CGST Act

11. *Instruction No.3/2022-23 [GST-Inv.] dated 17th August 2022* - Guidelines on issuance of summons under section 70 of the CGST Act

Chapter 10
Legislative Provisions

CHAPTER XIV: INSPECTION, SEARCH, SEIZURE AND ARREST	
Sections	**Title**
67	Power of inspection, search and seizure
68	Inspection of goods in movement
69	Power to arrest
70	Power to summon person to give evidence and produce documents
71	Access to business premises
72	Officers to assist proper officers

CHAPTER XIX: OFFENCES AND PENALTIES	
Sections	**Title**
129	Detention, seizure and release of goods and conveyances in transit
130	Confiscation of goods or conveyances and levy of penalty
132	Punishment for certain offences

RULES: CHAPTER XVII INSPECTION, SEARCH AND SEIZURE	
Rules	**Title**
139	Inspection, search and seizure
140	Bond and security for release of seized goods
141	Procedure in respect of seized goods

FORMS: CHAPTER XVII INSPECTION, SEARCH AND SEIZURE	
Forms	**Title**
Form GST INS-01	Authorisation for inspection or search *[See rule 139(1)]*
Form GST INS-02	Order of seizure *[See rule 139(2)]*
Form GST INS-03	Order of prohibition *[See rule 139(4)]*
Form GST INS-04	Bond for release of goods seized *[See rule 140(1)]*
Form GST INS-05	Order of release of goods/ things of perishable or hazardous nature *[See rule 140(1)]*

Circular No.41/15/2018-GST [CBEC-2016/03/2017-GST], dated 13-4-2018. (As amended by *Circular No. 49/23/2018-GST [F.No. CBEC/20/16/03/2017-GST],* dated 21-6-2018, *Circular No. 88/07/2019-GST [F. No. CBEC-20/16/04/2018-GST], dated 1-2-2019*.)

[Section 68 of the CGST Act, read with Rule 138 of the CGST Rules, goods in movement-inspection of-procedure for interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances]

Forms	**Title**
Form GST MOV-01	Statement of the owner/ driver/ person-in- charge of the goods and conveyance
Form GST MOV-02	Order for physical verification/ inspection of the conveyance, goods and documents
Form GST MOV-03	Order of extension of time for inspection beyond three working days
Form GST MOV-04	Physical verification report
Form GST MOV-05	Release order
Form GST MOV-06	Order of detention under section 129(1) of The Central Goods and Services Tax Act, 2017 and The State/ Union Territory Goods and Services Tax Act, 2017/ under section 20 of the Integrated Goods and Services Tax Act, 2017

Form GST MOV-07	Notice under section 129(3) of The Central Goods and Services Tax Act, 2017 and The State/ Union Territory Goods and Services Tax Act, 2017/ under section 20 of the Integrated Goods and Services Tax Act, 2017
Form GST MOV-08	Bond for provisional release of goods and conveyance
Form GST MOV-09	Order of demand of tax and penalty
Form GST MOV-10	Notice for confiscation of goods or conveyances and levy of penalty under section 130 of The Central Goods and Services Tax Act, 2017 read with the relevant provisions of State/ Union Territory Goods and Services Tax Act, 2017/ The Integrated Goods and Services Tax Act, 2017 and Goods and Services Tax (Compensation to States) Act, 2017
Form GST MOV-11	Order of confiscation of goods and conveyance and demand of tax, fine and penalty

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