

INSPECTION SEARCH AND SEIZURE UNDER GST LAW

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Rights and Duties of Tax Officer and Taxpayer During Search Under GST

1. Inspections and searches are conducted under Section 67 of the GST Act.
2. Inspection is carried out under Section 67(1) of the GST Act.
3. Search is carried out under Section 67(2) of the GST Act.

Procedure, Duties, and Rights

1. Searches may only be conducted by GST officials authorized by a competent GST officer, not below the rank of Joint Commissioner.
2. Authorization must be issued in **FORM GST INS-01** by the competent authority on the basis of **Reason to believe** that the tax payer has violated the section 67(1) or 67(2)
3. **FORM GST INS-01** must specify the taxpayer's name or business name whose premises are being searched.
4. **FORM GST INS-01** should include details of the premises to be searched.
5. **FORM GST INS-01** must mention the names, designations, and signatures of the GST officials conducting the search.
6. **FORM GST INS-01** should also include the name, designation, and signature of the authorizing officer (not below the rank of Joint Commissioner).
7. The search warrant (FORM GST INS-01) must bear the electronically generated **Document Identification Number (DIN)**.
8. The authorized search team cannot search any premises not listed in **FORM GST INS-01**.
9. Before starting the search, officers must identify themselves by showing their ID cards to the person in charge of the premises.
10. The search warrant should be presented to the person in charge of the premises, and their signature should be obtained on the warrant to acknowledge its presentation. At least two witnesses should also sign the search warrant.
11. The search should be conducted in the presence of at least two independent witnesses from the locality. If no local residents are available, residents from other areas, bank officials, or PSU officers may be asked to witness the search. The witnesses should be informed about the purpose of the search.
12. Before starting the search, the officers and witnesses should offer to be personally searched by the person in charge of the premises. After completing the search, all

officers and witnesses must again offer themselves for a personal search.

13. A **Panchnama/Mahazar** of the search proceedings must be prepared on the spot, including a list of all goods, documents, or items seized/detained. The Panchnama/Mahazar must be signed by the witnesses, the person in charge of the premises, and the authorized officer conducting the search.
14. A copy of the **Panchnama/Mahazar** and the annexed list of goods/documents should be given to the person in charge of the premises under acknowledgment.
15. If the residence is being searched, a lady officer must accompany the search team.
16. **No coercion against family members:** Under Section 67(2), GST officers cannot use force or coercion to record statements or conversations from family members.

In the case of *Paresh Nathalal Chauhan v. State of Gujarat* (2020), the Gujarat HC held that family members cannot be forced to provide statements or have their conversations recorded.

17. Officers should leave the premises once the **Panchnama/Mahazar** proceedings are complete.

Power to Seal or Break the Premises

18. Officers have the authority to break and open doors if access is denied. Similarly, if access is denied to a cupboard, box, or any container where goods, accounts, or documents are suspected to be hidden, officers can break them open. If access to the premises is denied, officers can also seal the premises.

Following Court Decisions on Sealing Premises may be handy:

- a) In *Singhi Buildtech Pvt Ltd v. Commissioner of Commercial Tax* (2019), the Karnataka HC held that officers should not unnecessarily seal premises.
- b) In *M/s Napin Impex Pvt Ltd v. Commissioner of DGST* (2018), the Delhi HC directed the release of a premises sealed for over a month.
- c) In *Anopsinh Kiritsinh Sarvaiya v. State of Gujarat* (2020), the Gujarat HC held that GST authorities should only be concerned with goods or articles that may be liable to confiscation and should not unnecessarily keep sealed godowns closed.

Seizure of Goods and Documents

19. Officers may seize goods, books, or documents if they believe these items are liable for confiscation or relevant to the investigation. A **Seizure Order** in **FORM GST INS-02**, duly signed by the officers, must be given to the taxpayer.

Period of Seizure and Release of Documents, Books, or Goods

20. Seized items will be retained only for as long as necessary for examination or investigation under GST law. As per *Universal Dyechem Pvt Ltd v. UOI* (2021), the Gujarat HC ruled that seized goods or documents not relied upon for issuing a show-cause notice should be returned within 30 days. Under Section 67(7), seized goods must be returned within 6 months unless a show-cause notice is issued. If no notice is issued, the goods may be kept for up to 6 additional months.

Photo Copy of Seized Documents

21. A taxpayer can make copies or take extracts from any seized documents in the presence of an authorized officer. However, the officer may refuse to allow copying if it may negatively impact the investigation (Section 67(5)).

Release of Goods Seized on Execution of Bond and Furnishing of Security

22. Under Section 67(6), seized goods can be provisionally released upon the execution of a bond and the provision of security in the form of a bank guarantee or by paying the applicable tax, interest, and penalty. If the taxpayer fails to present the goods at the designated time, the security will be forfeited and used against any tax, interest, penalty, or fine.

Can GST Officials Force Deposit of Tax During Search and Seizure?

23. GST officials cannot force a taxpayer to pay taxes during the search and seizure proceedings. The practice of collecting post-dated cheques during searches has been deemed illegal.

In the case of *M/s Remark Flour Mills Pvt. Ltd. v. State of Gujarat* (2018), the Gujarat HC held that collecting post-dated cheques during a raid is not a permissible means of tax collection.

Recording of Statements of the Taxpayer or Family Members During Search

24. Section 67 of the GST Act and **FORM GST INS-01** do not empower GST officials to record statements from any person during a search. For recording statements, during search or after search, a summon must be issued under Section 70 of the GST Act.

Documents Asked During Search and Seizure

25. Generally, taxpayers may be asked to provide books of accounts, including trial balances, audited financial statements, tax audit reports, and cost audit reports.

Precautions During Search and Seizure

26. Taxpayers should remain calm and cooperative, provide accurate information, and avoid hiding any documents. They must not obstruct officers conducting the search. The search should only be carried out in the premises listed in the search warrant. Taxpayers can ask for the search officer's identity card and should verify the list of seized goods and documents.

Note: The procedure, rights, and duties outlined here are illustrative and not exhaustive.