

SEARCH, SEIZURE AND RELEASE OF SEIZED GOODS

CONSTITUTIONAL VALIDITY OF SEARCH AND SEIZURE

A search by itself is not a restriction on the right to hold and enjoy property. No doubt a seizure and carrying away is a restriction of the possession and enjoyment of the property seized. This, however, is only temporary and for the limited purpose of investigation. Statutory regulation in this behalf is a necessary and reasonable restriction and cannot 'per se' be considered to be unconstitutional. No question of violation of Art. 19(1)(f) is involved in this case. A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. Issue of a search warrant is normally the judicial function of the Magistrate. When such judicial function is interposed between the individual and the officer's authority for search, no circumvention thereby of the fundamental right is to be assumed- **M.P. Sharma Versus Satish Chandra, District Magistrate [1978 (2) E.L.T. J 287 (S.C.)]**-.

INSPECTION OF PLACE OF BUSINESS BY OFFICER NOT BELOW RANK OF JOINT COMMISSIONER

SECTION 67(1)- Inspection of any place of business cannot be done below the rank of Joint Commissioner. Alternatively he may authorize in writing any other officer to inspect such place of business. Authorization to do Inspection must be issued in GST INS-01 read with Rule 139 of CGST Rules, 2017 authorizing any officer subordinate to him. It is also worth mentioning that authorization can also be issued by Joint Director of Central Tax or above rank. Joint Director and Joint Commissioner are of same rank as per Section 3 of CGST Act, 2017.

2020 (3) TMI 1179 - Calcutta High Court, M/S Amazonite Steel Pvt Ltd Versus Union of India & Ors- As per Section 83 empowers Commissioner to make the provisional attachment. In the said case attachment order was issued by Additional Director, DGGI. Held Orders of fresh provisional attachment has been passed by 'Principal Additional Director of Central Tax' who is the superior officer and therefore, as per Section 5(2) of the CGST Act, 2017 she possesses the power to pass the provisional attachment orders under Section 83. Principal Additional Director equates to Principal Commissioner of Central Tax.

In our opinion, Joint Commissioner cannot give a blanket authorization to the subordinate officer. Authorization to be issued for each case where the inspection is to be done by the officer subordinate to him.

REASONS FOR INSPECTION

Reasons to be believe that taxable person

- a. Suppressed the transaction relating to supply
- b. Suppressed the Stock of Goods in Hand
- c. Claimed the credit of input tax in excess of his entitlement
- d. Indulged in the contravention of the provisions of the act.

Reasons to believe that person engaged in transportation of goods or an owner or operator of a warehouse or a godown or any other place

- a. Keeping goods which have escaped payment of tax
- b. Kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act

Such reasons to believe must be couple with believe that there is evasion of tax

REASONS TO BELIEVE FOR INSPECTION

Proper officer must have reasons to believe that there is evasion of tax. Reasons to believe is necessary so that could not be any abuse of the power.

Further reasons to believe must be recorded in writing.

Broad Principles on "Reasons to be believe has been laid down by Supreme Court in case of Kranti Associates Pvt Ltd Versus Masood Ahmed Khan [2011 (273) E.L.T. 345 (S.C.)]-

Recording of Reasons- In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially. A quasi-judicial authority must record reasons in support of its conclusions. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

Reasons facilitate in Judicial Process- Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies. Reasons facilitate the process of judicial review by superior Courts. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the Life blood of judicial decision making justifying the principle that reason is the soul of justice. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system. Insistence on reason is a requirement for both judicial accountability and transparency. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

Reasons not merely Rubber Stamp Reasons- Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process. It cannot be doubted that transparency is the *sine qua non* of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737). Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and *Anya v. University of Oxford*, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions". In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process"

Belief is a Mental Operation- The statutory requirement of reasonable belief, rooted in the information in possession of Proper Officer under the Act, is to safeguard the citizen from vexatious proceedings. 'Belief' is a mental operation of accepting a fact as true, so, without any fact, no belief can be formed. It is true that it is not necessary for the Proper Officer under the Act to state reasons for his belief. But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which his belief was formed, as it has been

held by the Supreme Court in *Sheonath Singh's* case (AIR 1971 SC 2451), that the Court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials although the sufficiency of the reasons for the belief cannot be investigated by the Court

Reasons to Believe can be examined by Court- The statutory requirement of reasonable belief, rooted in the information in possession of Proper Officer under the Act, is to safeguard the citizen from vexatious proceedings. 'Belief' is a mental operation of accepting a fact as true, so, without any fact, no belief can be formed. It is true that it is not necessary for the Proper Officer under the Act to state reasons for his belief. But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which his belief was formed, as it has been held by the Supreme Court in *Sheonath Singh's* case (AIR 1971 SC 2451), that the Court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials although the sufficiency of the reasons for the belief cannot be investigated by the Court.

Assessee cannot compel to give Reasons for Believe - In *Gopikisen's case* [AIR 1965 SC 1298 = 1983 (13) E.L.T. 1434 (S.C.)], the Supreme Court held that Section 105 of the Customs Act did neither compel the officer to give reasons nor the particulars of the goods and of the documents were to be given in the authorisation.

British Physical Laboratories India Ltd Versus Assistant Collector, Directorate of Revenue, Intelligence Anti-Evasion (Central Excise) and Another [1983 (14) E.L.T. 2270 (Kar.)]- Reason to believe' for searches cannot be discussed in writ proceedings — Article 226 of the Constitution and Section 105 of the Customs Act, 1962. Non-supply of copy of the opinion formed by the Director (Revenue) on being asked would vitiate the search and seizure

INSPECTION OF PLACE OF BUSINESS

Further the power of inspection can be done

- a. Place of Business of Taxable Person
- b. Person engaged in the transportation of goods
- c. Owner or the Operator of Warehouse or Godown
- d. Any Other Place

The word "any other place" is general word. The word any other place has to be read in line with the specific words used in the provisions that is place of business, persons engaged in transportation, owner or the operator of warehouse or godown.

Grasim Industries Ltd vs Collector of Customs, Bombay [2002 (141) E.L.T. 593 (S.C.)]- Principles of *ejusdem generis*- The rule is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are construed as limited to things of the same kind as those specified. The rule reflects an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous.

INITIATION OF SEARCH & SEIZURE

Search and Seizure can be

- a. Pursuant to Inspection carried out under Section 67(1) or
- b. Otherwise,

It is not necessary that search can be carried out only after inspection of taxable person.

In case where the search or inspection has been done in respect of other assessee and consequent to such search/ inspection proper officer has reasons to believe that some other taxable person has secreted to the goods which are liable to confiscation or documents or has reasons to believe books or things are secreted which is relevant to proceedings, search operations can be carried out.

PROVISIONS OF CODE OF CRIMINAL PROCEDURE TO APPLY FOR SEARCH AND SEIZURE

Section 67(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted.

State Of Rajasthan Versus Rehman [1978 (2) E.L.T. J 294 (S.C.)]-Section 165 of the Code lays down various steps to be followed in making a search and same to be followed

- (i) the police officer must have reasonable ground for believing that anything necessary for the purpose of an investigation of an offence cannot, in his opinion, be obtained otherwise than by making search, without undue delay;
- (ii) he should record in writing the grounds of his belief and specify in such writing as far as possible the things for which the search is to be made;
- (iii) he 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 authorise 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

ISSUE OF SEARCH WARRANT AND ITS PRODUCTION

Section 67(10) of CGST Act, 2017- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure.

Further as per Section 165(4) of the Code of the Criminal Procedure, 1973- The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.

As per Section 100(1) of the Code of Criminal Procedure, 1973 Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Hence issue of search warrant is necessary and the same to be produced before the person who is liable to search.

PENAL ACTION FOR OBSTRUCTION DURING THE COURSE OF SEARCH

Section 67(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure. Section 353 of Indian Penal Code comes into play for making obstructions in performing the duty of public servant.

Section 353- Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or

uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

State Of Rajasthan Versus Rehman [1978 (2) E.L.T. J 294 (S.C.)]-Respondent and one Dhamman, it is alleged, obstructed the making of the search; with the result that the Deputy Superintendent fell down and received some injuries. The respondent and Dhamman were prosecuted, and the Munsif-Magistrate, Hinduan, discharged Dhamman but convicted the respondent under Section 353 of the Indian Penal Code and sentenced him to undergo three months rigorous imprisonment

POWER TO SEARCH & SEIZE

Joint Commissioner or of higher rank is empowered to make Search and Seize. Alternatively such officer may also authorize any other officer to conduct the search. Authorization to do Search must be issued in GST INS-01 read with Rule 139 of CGST Rules, 2017 authorizing any officer subordinate to him. Pursuant to Section 3 of CGST Act, 2017 Joint Director is of same rank as that of Joint Commissioner, hence office of rank of Joint Director and above are empower to make search or issue authorization to make search.

Any Officer below the rank of Joint Commissioner or Joint Director are not empower to make search in spite of the fact that such officer has reasons to believe that the taxable persons has made the evasion of tax.

Prakashsinh Hathisinh Udavat Versus State of Gujarat [2019 (31) G.S.T.L. 583 (Guj.)]- One of Respondent being the Assistant Commissioner has called the Petitioner for the purpose of inquiry and investigation. According to the respondents the petitioner had committed an offence punishable under Sections 132(1)(b) and 132(1)(c) and has defrauded the Government to the tune of Rs. 13.33 crore with respect to fake billing transactions. Petitioner has not filed any of the mandatory. Petitioner by way of writ challenged the respondents action of seizing the petitioner's car bearing number GJ-01-RX-0477 as well as his two mobile phones. Government Pleader, upon perusal of the record of the case is not in a position to point out any authorisation having been issued by a person not below the rank of Joint Commissioner for carrying out search in accordance with the provisions of sub-section (2) of Section 67 of the CGST/GGST Act, 2017. Assistant Commissioner was not conferred any power under sub-section (2) of Section 67 of the GGST Act to carry out any search or inspection as stated in the order of seizure dated 25-10-2018. The impugned order has therefore, been passed without any authority of law. Consequently, the seizure of the car and the mobile phones belonging to the petitioner is illegal, arbitrary and is not backed by any authority of law. With regard to the gross abuse of powers on the part of the respondent No. 4, merely setting aside the impugned order will not meet the ends of justice. Wwhen an officer functioning under the GGST Act, acts in a highhanded and arbitrary manner in excess of the authority vested in him the same is required to be viewed very seriously

In a Writ Petition filed before Andhra Pradesh High Court by Mahendra Kumar Indermal [2020 (4) TMI 626]- Pursuant to search u/s 67, prohibition order being confiscation of goods was passed u/s 67(2) in for INS-03 by Deputy Assistant Commissioner which was without authorization of Joint Commissioner. Held looking to the order of prohibition so passed in GST INS 03, the said order passed by respondent No. 1, without reference to the order of authorisation in writing, is illegal and without jurisdiction. Therefore, it is hereby set aside.

Apart from the above power to search and seize, following power could be exercised during the course of search and seizure as per Section 67(4) where the access to premises, almirah, electronic devices and others are denied

- a. to seal or break open the door of any premises or
- b. to break open any *almirah*, electronic devices, box, receptacle

in which any goods, accounts, registers or documents of the person are suspected to be concealed.

CIRCUMSTANCES OF SEARCH & SEIZURE- SECRETED OR LIKELY TO BE SECRETED

Where the proper officer, not below the rank of Joint Commissioner has reasons to believe

- a. that any goods liable to confiscation are secreted in any place or
- b. Any documents or books or things are secreted in any place and such in his opinion shall be useful for or relevant to any proceedings under this Act

Joint Commissioner or Any Officer authorized by him can search the place of business. Prime Objective of Search is to bring out the goods, documents, books or things which are secreted

Reasons to believe about such secrecy of goods or documents or books or things has been formed

The term secreted has been defined in case of Durga Prasad, Etc Versus H.R. Gomes, Superintendent (Prevention), Central Excise, Nagpur And Another [1983 (13) E.L.T. 1501 (S.C.)]- secreted' must be understood in the context in which the word is used in the section. In that context, it means 'documents which are kept not in the normal or usual place with a view to conceal them' or it may even mean 'documents or things which are **likely to be secreted**'. In other words, documents or things which a person is likely to keep out of the way or to put in a place where the officer of law cannot find it. It is in this sense that the word 'secreted' must be understood as it is used in Section 105 of the Customs Act.

Golden Cotton Industries Versus Union of India [2019 (29) G.S.T.L. 587 (Guj.)]- If the authority has reason to believe that the goods liable to be confiscated are likely to be secreted, the authority will have the power to pass an order of prohibition pursuant to the order of seizure.

Hence the term secreted is very wide and includes within its ambit "likely to be secreted".

In Durga Prasad's case, AIR 1966 SC 1209 = 1983 (13) E.L.T. 1501 (S.C.) it has been held by the Supreme Court that the power of search granted under Section 105 of the Customs Act (*para materia* to Section 67 of the Act, 2017) is a power of general search but it is essential that before this power is exercised, the preliminary conditions required by the section must be strictly satisfied, that is, the officer concerned must have reasons to believe that the documents and things which in his opinion are relevant for any proceedings under the Act, are secreted in their place.

Supreme Court in the case of R.S. Seth Gopikisan Agarwal's case reported in AIR 1967 SC 1298 = 1983 (13) E.L.T. 1434 (S.C.). Section 105 of the Act confers an unguided and arbitrary power on the Assistant Collector of Customs to make a search. The object of the section is to make a search for the goods liable to be confiscated or the documents secreted in any place which are relevant to any proceeding under the Act. The legislative policy reflected in the section is that the search must be in regard to the two categories mentioned therein, namely, goods liable to be confiscated and documents relevant to a proceeding under the Act. *Though under the section the Assistant Collector of Customs need not give the reasons, if the existence of belief is questioned in any collateral proceedings, he has to produce relevant evidence to sustain his belief."*

Term "Seizure"

Gian Chand and Others Versus State of Punjab [1983 (13) E.L.T. 1365 (S.C.)]- 'Seizure' means to take possession of contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involves a deprivation of possession and not merely of custody of goods. Thus, the unilateral act of the person seizing is the very essence of the concept of seizure

Object of Making Seizure- Intention of making seizure is only to protect that interest of the revenue. If the same is served, there could not be any seizure. Order for seizure is to be made in Form GST INS-02.

Golden Cotton Industries Versus Union of India [2019 (29) G.S.T.L. 587 (Guj.)]- If the authority has reason to believe that the goods liable to be confiscated are likely to be secreted, the authority will have the power to pass an order of prohibition pursuant to the order of seizure. Seizure or prohibition of the goods or documents or books of accounts or other things even if the confiscation proceedings are pending. The argument of Mr. Sheth runs contrary to the Scheme of the Act. The whole object is to preserve and protect the goods or books or documents pending the determination of the tax liability.

Pursuant to Section 67(2) following can be seized

- a. Goods
- b. Documents
- c. Books
- d. Things

British Physical Laboratories India Ltd Versus Assistant Collector, Directorate of Revenue, Intelligence Anti-Evasion (Central Excise) and Another [1983 (14) E.L.T. 2270 (Kar.)] – Expression “document” shall include any matter written or expressed or described upon any substance. Further, even according to dictionary meaning, the term ‘document’ would also include an ‘account book’, therefore, anything written, typed or printed or a paper on which mode markings are made will be a ‘document’. Hence, account books written, maintained by firms, companies, business houses and individuals without an iota of doubt are ‘documents’. Therefore, it cannot be said that any “account books” are not ‘documents’ within the meaning of that term occurring in Section 105 of the Customs Act.

NOTE OF GOODS, DOCUMENTS, BOOKS, THINGS SEIZED

The proper officer upon seizure of goods u/ s 67(2) shall prepare a note of the inventory as per Section 67(9). As per Rule 139(5) of CGST Rules, 2017. The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, inter alia, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized. The said "Note" can be treated as Seizure List.

State of U.P. Versus Lavkush Kumar And Others [1986 (26) E.L.T. 922 (All.)]- The seizure-list was also not prepared. Accordingly, the seizure has not taken place. The goods had not come into his possession legally.

PROHIBITORY ORDER WHERE GOODS CANNOT BE SEIZED

Pursuant to proviso to Section 67(2)-

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

The proper officer shall issue such order in GST INS-03.

Upon issue of such order the taxable person shall not be allowed to deal with the goods.

Golden Cotton Industries Versus Union of India [2019 (29) G.S.T.L. 587 (Guj.)]- If the authority has reason to believe that the goods liable to be confiscated are likely to be secreted, the authority will have the power to pass an order of prohibition pursuant to the order of seizure.

ASSEESSE'S RIGHT TO GET PROVISIONAL RELEASE OF GOODS SEIZED

As per Section 67(6)- The goods so seized under section 67(2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

Further as per Rule 140- Such Bond shall be executed in form GST INS-04. As regarding the security the same shall be in form of Bank Guarantee equivalent to the amount of applicable tax, interest and penalty. Further in future if the goods so released could not be produced the security shall be encashed and adjusted with the tax, interest and penalty.

Court should not interfere with the release of the goods seized pursuant to section 67(2) when there is proper mechanism for the release of the goods already provided in the Act. However one could approach High Court for the speedy process of the release of the goods if there is long delay even after completing the formalities for the release of the goods.

Golden Cotton Industries Versus Union of India [2019 (29) G.S.T.L. 587 (Guj.)]- In this case, Court has kept away from issue the order for the release of the goods seized u/s 67(2). Held "we permit the writ applicant to invoke clause (6) of Section 67 of the GST Act and prefer an appropriate application before the appropriate authority for release of the seized goods on provisional basis upon execution of a bond and furnishing a security to the satisfaction of the concerned authority. If such an application is filed, the same shall be considered expeditiously, on its own merits and in accordance with law"

State of Uttar Pradesh Versus Kay Pan Fragrance Pvt Ltd [2019 (31) G.S.T.L. 385 (S.C.)]- Recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum (even upto the total value of goods involved), respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in Section 67(6) of the Act. In the interim orders passed by the High Court which are subject-matter of assail before this Court, the High Court has erroneously extricated the assessee concerned from paying the applicable tax amount in cash, which is contrary to the said provision. The orders passed by the High Court which are contrary to the stated provisions shall not be given effect to by the authorities. Instead, the authorities shall process the claims of the concerned assessee afresh as per the express stipulations in Section 67 of the Act read with the relevant rules in that regard. In terms of this order, the competent authority shall call upon every assessee to complete the formality strictly as per the requirements of the stated provisions disregarding the order passed by the High Court in his case, if the same deviates from the statutory compliances. That be done within four weeks without any exception.

Assessee is allowed to Furnish the Bank Guarantee as per Rule 140 of CGST Rules, 2017

Qmax Assay and Hallmarks Versus Intelligence Officer (IB) Commercial Taxes, Palakkad [2018 (18) G.S.T.L. 792 (Ker.)]- Pursuant to Section 67(2) goods were seized. Petitioner wished to provisionally release the goods u/s 67(6)

read with Rule 140 of CGST Rules, 2017. Petitioner submitted that he is unable to furnish bank guarantee in terms of sub-rule (1) of Rule 140 of the Rules. Held if the petitioner is unable to furnish bank guarantee in terms of sub-rule (1) of Rule 140 of the Rules, the bank guarantees furnished by the third parties for the said purpose shall be accepted

RELEASE OF SEIZED GOODS AFTER SIX MONTHS WHERE NO NOTICE ISSUED

Section 67(7)- Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

Notice as mentioned above refers to Show Cause Notice. Where the proper office has not issued the show cause notice within 6 months from the date of seizure, the said goods shall be returned to the person from whose possession the goods has been seized and further period of 6 months can extended by the proper office on sufficient cause.

This unconditional right to release of goods where show cause notice was not issued is applicable where the security and bond has not been furnished for the provisional release of goods.

DISPOSAL OF PERISHABLE OR HAZARDOUS GOODS

Whether the goods seized u/s 67(2) are notified hazardous or perishable goods, then such goods are to be disposed off as per Rule 141 of CGST Rules, 2017. If the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment otherwise the proper officer shall dispose of the goods

ASSESSEE RIGHT TO GET COPIES OF DOCUMENTS SEIZED

Pursuant to Section 67(5) the taxable person is entitled to get copies or take the extracts of the documents seized u/s 67(2).

However the officer may deny such request if in his opinion that furnishing of the copies of the documents would be prejudicial to the process of Investigation.

Further as per Section 67(3) documents, books or things which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

SEALING OF PREMISES

Section 67(2) confers the power to search and seize the goods, documents, books or things. Further Section 67(4) confers the power to break, open and seal the door where the access is denied however such provisions do not confer the power to seal the premises completely.

In a Writ Petition filed before High Court of Delhi by Napin Impex Pvt Ltd [2018 (19) G.S.T.L. 578 (Del.)], The petitioner alleges that its premises were visited by the Revenue authorities and DGST officials directed production of books of accounts and other documents. Petitioner was not in possession of those, it sought 24 hours time for

the same. Apparently a temporary sealing of the premises was ordered. On the next date i.e. 30-8-2018, the premises were completely sealed. Held Section 69(4), which merely authorizes the concerned officials to search the premises and if resistance is offered, break-open the lock or any other almirah, electrical device, box, etc. containing books and documents, the complete sealing of the premises, in the opinion of the Court is *per se* illegal. Premises having been in the possession of the respondents for over a month, a direction was issued to remove the seal forthwith within the next 12 hours and handover the premises to the petitioner.

The above Interpretation is based on Personal Understanding and only for Educational Purposes