



Office of the Commissioner of State Goods and Services Tax Department
Government of Kerala, Thiruvananthapuram

No. **CT/8087/2019-C1**

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Circular No.8/2019

Sub: SGST Act- Power of inspection, search, and seizure – uniformity in the procedures to be followed in recovering documents – preparing inventory of seized documents - Guidelines issued- reg.

The principal object behind inspection of the accounts of a taxpayer is to find out whether the accounts are truly and properly maintained, and whether the taxpayer is indulging in manipulation of accounts with a view to evade payment of tax. Section 67 of the State Goods and Services Tax Act read with Rule 139 of Kerala Goods and Services Tax Rules, 2017 empower the Proper Officer to inspect the business place of a taxpayer, if there is reason to believe that such person has suppressed any transaction relating to supply of goods or services or both or has acted in contravention of any of the provisions of the Act. The inspecting officer has power to verify the stock of goods in hand and call for the accounts, registers, other documents etc. of a taxpayer.

When an elaborate search or inspections is planned, the persons to be included in the teams should be identified beforehand. The officer organizing the search and seizure operation should brief the search parties about the object of the search and other salient features of the operation proposed to be carried out. Such briefing is limited to the nature of business of the person whose premises is being searched, time of strike, information regarding computer systems and other information technology related equipments, secret chambers, underground cellars and hidden places, etc. In the oral briefing, the names of persons and premises intended to be searched should not be disclosed.

The leader of the inspection team should ensure that his party reaches the premises to be searched exactly at the time decided in advance by the Investigation Unit organizing the inspection. In case the inspection party reaches the locality, in which the premises to be searched is situated, before

the predetermined time, the leader should ensure that the members of the party do not actually enter the premises before the appointed time. Persons in occupation of the premises should not get any advance information about the inspection party's arrival.

On reaching the premises, the leader should ensure that members of the search party are deployed at all entry and exit points. This will ensure that no document, books of account, other valuable articles etc. are thrown out of the premises to be searched. If intercom systems are installed at the entrance of the premises or outside it, through which interaction with the occupants is possible, the Inspecting Officer should take control over such systems so that there is no advance intimation of the arrival of the inspection party to those present in the business place.

If entry cannot be easily accessed, the Inspecting Officer should seek assistance of police officers. In such situations, entry can also be effected by breaking open any outer or inner door or window. Where the premises to be searched are found locked, the Inspecting Officer should get in touch with the Controlling Officer for further instructions.

As soon as the members of the inspection party enter the premises to be searched, they should identify themselves to the person in respect of whom the authorization has been issued or the person in occupation and control of such premises. All the inspecting team members should have valid official identity cards.

While entering a shop for inspection, the attention of the Officer should be concentrated on what is happening there at that moment. He should watch whether the taxpayer or any employee is trying to conceal any records or hurriedly making any entries in accounts or writing up any bill or delivery chalan or whether any goods are being removed without proper documents. While inspecting a place of business, if the inspecting Officer finds any secret accounts or other records, he is entitled to inspect such accounts and records also, for there is the presumption that all accounts and other records found in a place of business relate to that business.

The proper officer is empowered to verify all accounts, registers, and other documents maintained by a dealer, the goods in his possession and his Offices, shops, godowns, vessels or vehicles shall also be open to inspection at all reasonable times by such Officers where tax evasion or fraud is suspected. The inspecting officers can seek police protection, if the situation so warrants.

The inspection of accounts and other records serves the purpose of verifying whether the taxpayer is maintaining the books of accounts and other

records as laid down in the Act and Rules. Failure to maintain accounts properly is an offence punishable under Section 122 of the Act. The officer who is authorized to inspect the business place shall put his signature on the first and last page of the recovered records and randomly in other pages affixing the seal also. Apart from the authorized officer, another officer/Assistant State Tax Officer shall also sign in all the pages signed by the authorized officer.

Irregularities, if any, found in the maintenance of accounts can also be made use of against the taxpayer while processing the file. The principal object of inspecting the goods is to find out whether they have been duly accounted. This can be easily done if the taxpayer is maintaining a stock account or inventory of the goods. If no stock account is available, the stock has to be worked out with reference to the quantitative details available in the accounts. The inspection of goods also helps to find out whether any goods have been sold without disclosing it in the accounts.

The Office, shops, godowns etc., are to be inspected to find out whether the taxpayer is keeping any secret accounts or unaccounted goods. For every inspection, a Shop Inspection Report/Mahazar should be prepared and got signed by the taxpayer, or his manager or other person in charge of the business place. The Shop Inspection Report/Mahazar is to be prepared by the senior most officer among them and should be prepared in duplicate. The original of the Shop Inspection Report/Mahazar is to be filed in the investigation/Crime file and the duplicate to be given to the taxpayer.

The details of books of accounts maintained and produced at the time of inspection are to be recorded in the Shop Inspection Report/Mahazar. The name of bank, account numbers, swiping machine numbers etc. available are also to be recorded. Irregularities noticed during the inspection should be briefly mentioned in the Shop Inspection Report/Mahazar. The Inspecting Officer may affix his signature or Official seal or both at one or more places in the books and records inspected by him. If he refuses to sign the Shop Inspection Report/Mahazar, a separate statement to be prepared and got attested by two respectable persons.

Under section 67(2) of the Act, Proper Officer is empowered to enter and search any Office, shop, godown, vessel, receptacle, vehicle or any other place of business or any building or place where such Officer has reason to believe that the taxpayer keeps or is for the time being keeping, any accounts, registers or documents of his business. If the building to be searched is a residential accommodation, a search warrant should be obtained from the Commissioner of State Tax. As far as possible, all searches should be made in accordance with the provisions of the Code of Criminal Procedure.

The power conferred on the Officers to enter and search includes the power to break open or seal any door of any premises, electronic devices, almirah, box or receptacle in which accounts, registers or other documents of the tax-payer may be kept or any place where the accounts are reasonably suspected to be kept. The power to break open the door shall be exercised only if the owner or occupant of the premises fails or refuses to open the door on being called upon to do so.

The officer conducting the inspections or search may, for reasons recorded in writing, seize such accounts, registers, records or other documents, if found necessary. The reasons may be recorded in the Shop Inspection Report/Mahazar. In case of seizure of any accounts or other records, the taxpayer should be given an order of seizure in Form GST INS-02 for the books and other records so seized. The details of such recoveries, with page number, shall be recorded in the order of seizure in Form GST INS-02. The 'details of goods seized' and the 'Details of books, documents, things seized' should be entered in the respective tables. In case the space provided in the respective table is insufficient to enter the details, separate sheet may be annexed. As per Rule 139(5), the officer seizing the goods, documents, books or things shall prepare an inventory with a detailed description of goods or documents seized. The order of seizure in Form GST INS-02 and inventory shall be prepared in duplicate and the acknowledgement of the taxpayer or his representative present in the shop at that time may be obtained on the copy.

The number of records seized should be specifically identifiable. If any registers or documents are recovered, it should be clearly mentioned that the register or document contain so many number of written pages. The blank pages should be cancelled. In case of any loose sheets, invoices, Delivery chalans, estimate slips, quotations or any business related transaction slips are recovered, the inspecting officers shall segregate the same according to their nature and stitch them on the left hand top. The inspecting officer shall put his signature in all pages and affix office seal. The description of such recoveries with total number should be recorded in the inventory. No bulk recovery of any documents without quantification is permissible.

The inspecting team shall have the power to search any person who has got out of, or is about to get into, or is in any place where an inspection or search is carried out, or any vessel or vehicle of any dealer, if the Officer has reasons to suspect that such person has secreted about his person any goods or any accounts, registers, records or other documents. The inspecting team shall have the power to record the statement of the taxpayer or his manager, agent or servant, to take extracts from records found in any premises, and to put identification marks on accounts, registers, documents or goods.

The inspecting team shall have the power to require any person who is found to be in possession or control of any accounts, register or other documents maintained in the form of electronic record as defined in Section 2(1)(t) of the Information Technology Act, 2000, to afford such officer the necessary facility to have access to such books of accounts or other documents. The "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. In case of electronic data recovered, the details should be entered in the Table B of Form GST INS- 02 and in the inventory of seized documents. If the computer or Central Processing Unit is recovered, the Machine Serial Number, Make/Brand name, Model & Processor is to be specified. In case of recovery of Hard disc, Serial Number & MDL Number, Total Storage capacity, Make/Brand name, etc. and the size of data stored are to be recorded. In case of recovery of Pen drive, Compact Disc or other storage devices, the Make/Brand name, Total Storage capacity, size of data stored are to be recorded. During the course of inspection, if any data having relevance in processing of the crime file has to be copied into a Non-Re writable Compact Disc, this disc shall be signed with permanent marker pen by the Inspecting Authority, and at least one official in the inspection team.

If any computer or electronic devices are recovered, it should be returned only with written permission of the Deputy Commissioner (Intelligence). The Deputy Commissioner (Intelligence) shall ensure that copies of relevant business transactions are extracted and printouts of the same are filed in the crime file for further verification. If further analysis of the electronic data is required, Deputy Commissioner (Intelligence) shall take necessary steps in this regard through C-DAC or other approved agencies.

The books, registers and other records seized, shall be entered in a register maintained for the purpose (No.III) and kept in the personal custody of the Officer. As per Section 67(2) of the Kerala State Goods and Services Tax Act, 2017, the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act. Once the entire proceedings are over, the recovered records/data needs to be returned to the tax payer after obtaining photo copies of all such documents/records and the same shall be retained under safe custody with proper labelling in order to have greater transparency. The Proper Officer shall affix his signature along with Official seal on such documents returned and obtain an undertaking from the taxpayer to produce the same whenever called upon to do so. The Proper Officer shall obtain a receipt from the taxpayer showing the details of the records returned and the page number of the accounts and other records where the signature and office seal have been affixed. After processing of the crime file, the same

along with copies of recoveries shall be transferred to the concerned assessing officer for further verification if any.

Leaders of inspection parties should telephonically report to the controlling officer soon after the search party has entered the premises. They should also report all important developments of the inspection proceedings. Wherever necessary, leaders of the search parties should seek instructions from the controlling officer. The inspection team has to forward a xerox copy of the shop inspection report/mahazar along with details of recoveries to the Controlling Officer. The Controlling Officer who receives the copy of the shop inspection report/mahazar along with details of recoveries should closely watch the progress of the case and give appropriate and timely directions for the successful finalization of the case. The Controlling Officer shall also ensure that the crime file is processed within three months preferably.

State Goods and Services Tax department being a revenue yielding department, a proper overseeing mechanism of the work done by the officers has to be in place, to ensure accountability, transparency and fairness in the exercise of statutory powers. In this regard, instructions already issued vide Circular No.10/2014 should be adhered to. Therefore, all notices, including that of penalty, issued to the taxpayer or others demanding Rs.5000/- or above shall be approved by the immediate superior controlling officer before the issuance. In case the demand exceeds Rs.50,000/-, it should be approved by the Deputy Commissioner (Intelligence). If the final order issued varies from the notice, the same shall also be submitted to such officers for approval. All instructions issued earlier in connection with the enforcement activities should also be adhered to.

All the officers are directed to strictly abide by the above instructions.

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COMMISSIONER OF STATE TAX