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Inspection (Survey), Search, Seizure & Recovery by Tax Authorities



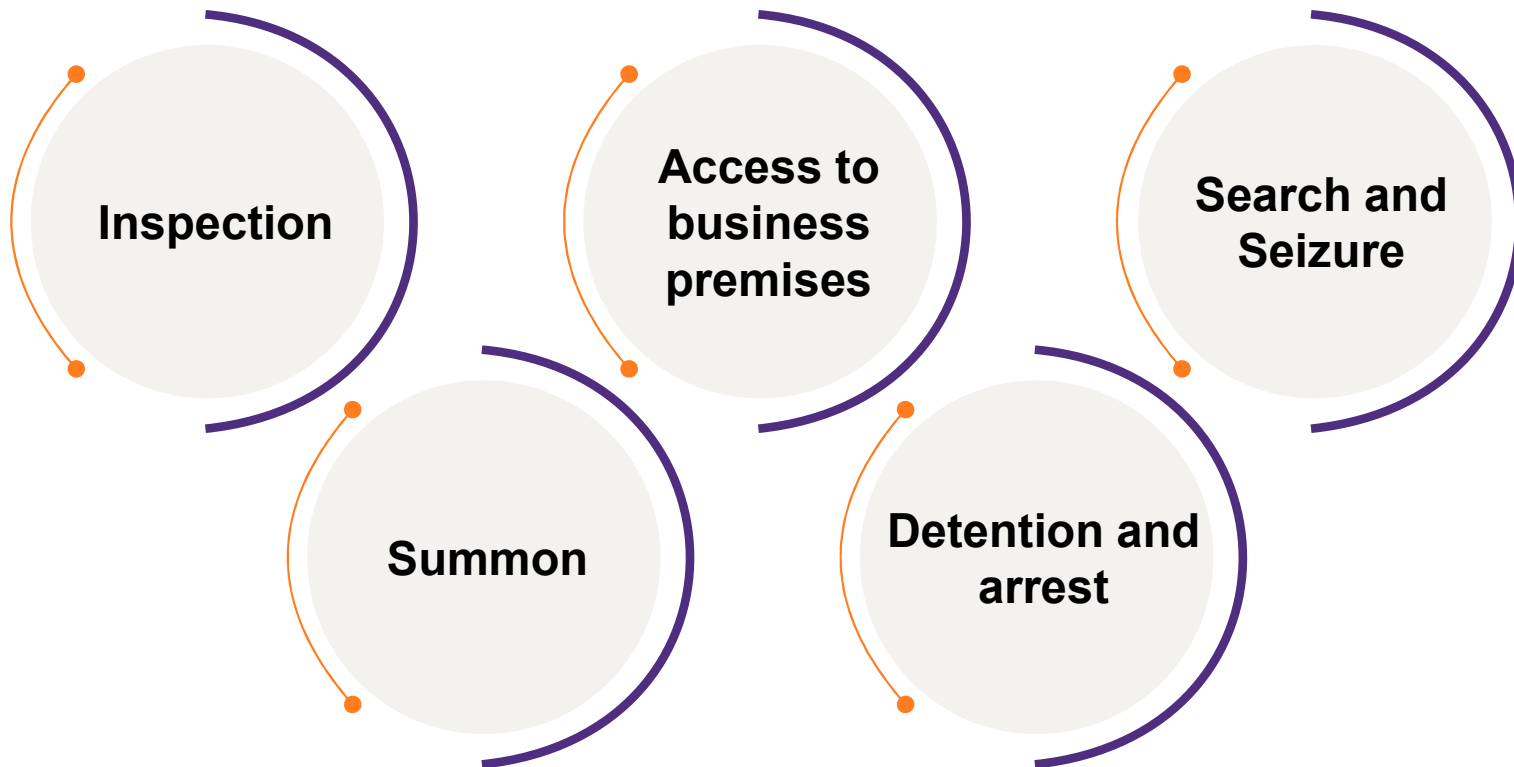
**All India Chartered Accountants
Society (AICAS)**

5 August 2023

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Power of officers during investigation





Inspection and Access to business premises

Inspection

- A softer provision than search which enables the officer to **access any place of business**
- Inspecting Officer to mandatorily have **authorisation issued by JC or above** rank officers
- To be conducted, if PO has **Reason to believe** that the concerned person is involved in any of following actions:
 - Suppression of any transaction
 - Claimed excess Input tax credit
 - Contravention of any provisions to evade tax
- Inspection of place of business of:
 - Taxable person
 - Transporter
 - Owner or operator of a warehouse or godown
 - Any other place



Reason to believe : A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise

Process flow

Conducting inspection cum search

- AO to conduct inspection at identified location
- Lady officer mandatory in case premise is occupied by ladies and children

AO not authorised to take away anything

AO does not have the power to carry away any copies of books of accounts or any assets



Authorisation by JC or above

- Issued, if reasons to believe which justifies inspection
- To clearly mention whether it is 'inspection' or 'inspection cum search'

Identification

- AO to disclose their identify and offer their personal search before commencement
- Obtain signature of party

Working hours

Proceedings to be commenced and concluded during working hours unless extended

Access to business premises

- Authorization to be issued by **JC or above rank officer**
- Allows AO to access **any place of business** of a registered person
- AO can **inspect** books of account, documents, computer system and such other things
- Person in charge to submit requisite documents **within 15 workings** days from date of demand or as extended by AO
- Documents to be made available:
 - Records maintained by the registered person
 - Trial balance or its equivalent
 - Audited statement of financial accounts,
 - cost audit report
 - Income tax reports etc.





Search & Seizure

Search & Seizure

- Search warrant can be issued if **JC or above rank officers**
- Reasons to believe pursuant to an inspection or otherwise that following is **secreted** in any place
 - Goods liable to confiscation or
 - Any documents or books or things relevant to any proceedings
- If access is denied, AO can **force open** door of any premises and break open any almirah, box, electronic devices etc. in which he suspects that any goods, accounts or documents are concealed
- Where goods are not practicable to seize, PO may serve on the owner or the custodian of the goods, **an order of prohibition**
- Seized goods to be **released provisionally** on execution of bond / furnishing security of quantum as determined
- Notice must be issued within **6 months** of seizure unless extended, failure of which will lead to return of the goods seized.



Process flow

Scope of search

Scope to be limited to secreted goods or documents etc. at location which was inspected and searched

Uninterrupted proceedings

Once premises are searched, proceedings must be stopped or interrupted.



Validation of reason to believe

If reasons to believe are validated during inspection, AO may extend 'inspection' to 'search' by seeking further authorization

Proceed with Seizure

On discovery of secreted articles, AO may confiscate goods or conduct further investigation

Order of Seizure

Details of search, discovery, witnesses and time of conclusion to be specified in the order

Key points for consideration

Proper officer for undertaking search

The officer authorizing the search must be of rank of the JC or above, otherwise proceedings will be void ab initio

Coverage of term 'Secreted'

Documents which are kept not in the normal or usual place with a view to conceal

Good lying in the undisclosed place but not recorded in books of accounts

Place of search

Search warrant must specify the place of search

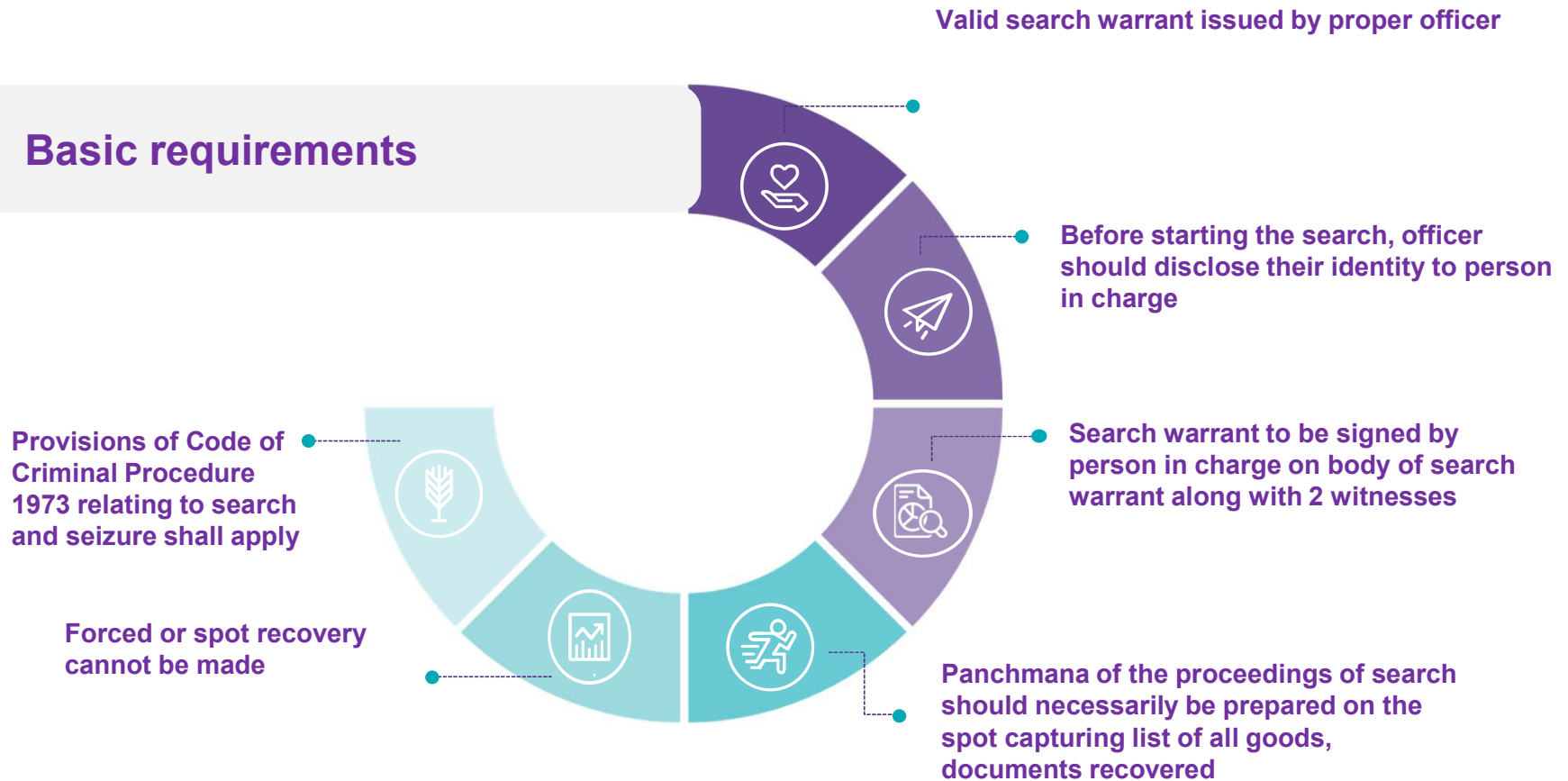
Search beyond the warrant will be illegal

Time barring

Where the time period under Section 73 or 74 has elapsed, no search can be conducted for the said period.

Key points for consideration

Basic requirements



Key judicial precedents

M/S Patran Steel Rolling Mill Vs Assistant Commissioner of State Tax [2018 (12) TMI 1441 - GUJARAT HIGH COURT]

Provision of section 67, should **not be exercised as a matter of course**, but only after due application of mind to the relevant factors

Dhruv Krishan Maggu Vs Principal Director General, DGGI [2022 (12) TMI 654 - DELHI HIGH COURT]

There is a clear distinction brought about in the CGST Act, 2017 in case of inspection, search and seizure of 'documents or books or things' in contrast to seizure of 'goods'. In the case of documents or books or things, the same can be **retained by the officer for so long as it is required for examination and for inquiry of proceedings** under the CGST Act, 2017, and the seized goods have to be returned to the person to whom they were seized within six months of the seizure of goods, unless and until, the proper officer, on sufficient cause, extends the same for a further period of not exceeding then six months.

M/S. Vallabh Textiles Versus Senior Intelligence Officer And Ors [2022 (12) TMI 1038 - DELHI HIGH COURT]

The **deposit made during search proceedings cannot be considered as voluntary**. The officers should also give space to the concerned person to seek legal advice, and only thereafter deposit tax, interest and penalty, wherever applicable, upon a proper self-ascertainment.



Summons

Summons

- Summon is issued to **direct any person** to appear before the authorities
 - To give evidence
 - To produce a document or any other thing
- Summons can also be issued by the Superintendent, after obtaining prior approval from Assistant / Deputy Commissioner
- Issued in same manner as in case of civil court under Code of **Civil Procedure, 1908 (CPC)**
- Deemed as **judicial proceedings** under:
 - **Section 193 of IPC:** Punishment for intentionally giving false evidence in judicial proceeding with imprisonment of term which may extend to 7 years plus fine
 - **Section 228 of IPC:** Punishment for insult or interruption of public servant in judicial proceeding with imprisonment upto 6 months or fine upto INR 1000 or both



Guidelines

Instruction no. 03/2022-23 dated 17 August 2022

- Summons are to be issued as **last resort** when it is absolutely required
- All persons summoned are **bound to appear** before the officers concerned
- Senior management officials such as CMD/ MD/ CEO / CFO or similar officers of any company or PSU **should not be generally be issued summons in their first instance** except if there are clear indications of their involvement in the investigation
- **Issuance of repeated summons** without ensuring service of the summons must be avoided. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances
- Statements should be **recorded during office hours**, however, an exception can be made regarding the time and place of recording statement having regard to the facts of the case



Key judicial precedents

FSM Education Pvt. Ltd. [2022 (1) TMI 551 - BOMBAY HIGH COURT]

Summons should be **issued as a last resort** and only when there is non-cooperation on part of the Assessee. Summons cannot be issued casually.

Sudhir Deoras [2012 (11) TMI 915 – JHARKHAND HIGH COURT]

Summons cannot be issued to the top management at the first instance. The Delhi HC in *Gail Gas Limited* [(2018) 100 taxmann.com 242] directed the Assessee to intimate to the department the officers concerned who were familiar with the records, and shall be available for investigation. Additionally, vide Instruction No. 3/2022-23 (GST-Investigation), the CBIC has emphasised that officers should explore instances when instead of resorting to summons, a letter of requisition of information may suffice. These instructions also call upon the officers to avoid issuance of summons when statutory documents are available online in GST portal.

Dharampal Satyapal Ltd. [[2017] 83 taxmann.com 341 - GAUHATI HIGH COURT]

Following the decision of the Gujarat HC in *A.S. Corporation v. Union of India* [2008 (223) ELT 26 (Guj.)], the Gauhati HC held that **if all the details are available with the department, then issuing summons to officers of the company or other persons may not be necessary.** The HC quashed the enquiry pertaining to the capacity of the packing machine where the inquiry and consequent summons were held to be a 'hollow exercise' and the information sought from persons summoned had no material bearing on the case.



Offenses – Prosecution & Compounding

Offenses by companies and individuals

- **Person in charge** and responsible for the conduct of business as well as the company, to be deemed guilty of the offence and liable to be proceeded against and punished
- **Director, manager, secretary**, or other officer of company to be held guilty where their involvement is proved to be involved in the offence
- For offence by **partnership firm, LLP or HUF**, partner or karta or managing trustee to be deemed guilty of offence
- **Exception**: Where a person proves that offence was committed without his knowledge or he had exercised due diligence



Compounding of offences

- Certain offences (except mentioned below) can be compounded by the Commissioner, upon payment of tax
- Situations, where compounding is **NOT** allowed :
 - To a person **accused** of issuing invoices without supply, leading to inappropriate availment or utilization of ITC OR refund of tax
 - A person, **convicted** for an offence under GST laws
 - Where the benefit of compounding has been exercised **once**
 - Any other offences as prescribed
- Compounding amount may vary between **25% to 100%** of the tax amount
- Upon payment of compounding amount, all proceedings in respect of such offence shall stand abated



Prosecution

Offences - illustrations

- Illustrations of offences :
 - Supply without issue of invoice
 - Issue of invoice without supply
 - Avails ITC fraudulently
 - Collect GST but does not pay
 - Various other cases
 - Falsifies or substitutes financial records

Quantum of punishment

- If tax in question **exceeds 500 lac** : Imprisonment up to **5 years + fine**
- If tax in question is **between 200 lacs to 500 lacs** : Imprisonment up to **3 years + fine**
- If tax in question is **between 100 lac to 200 lacs** : Imprisonment up to **1 year + fine**





Recovery

Recovery

- Taxpayer is liable to pay the tax demand within **three months** from the date of receipt order
- If said amount is not paid, recovery proceedings are initiated
- **Mode of recovery:**
 - Deducting the amount due to the taxpayer
 - Detaining and selling the goods of the taxpayer
 - Third party recovery i.e. debtors
- Recovery of tax without issuance of show cause notice is not sustainable.
- **Payment in Instalments**
 - Allow time to pay an amount
 - Maximum 24 monthly instalments subject to interest payment
 - In case of default, no further extension and recovery proceedings begin without further notice





Issues for Discussion

Key Judicial Precedents - Investigations

M/s R.P. Buildcon Private Limited & Anr. (CALCUTTA HIGH COURT)

parallel proceedings cannot be initiated/conducted simultaneously by the different wings of the same department for the same period on the same subject matter against the same Assessee

Sureshbhai Gadhecha (GUJARAT HIGH COURT)

There cannot be two parallel investigations under the State Act as well as the Central Act.

Sonal Berlia (ORISSA HIGH COURT)

Simultaneous investigation cannot be carried on by Central and State GST authorities concerning the same period.

Indo International Tobacco Ltd. vs DGGI (DELHI HIGH COURT)

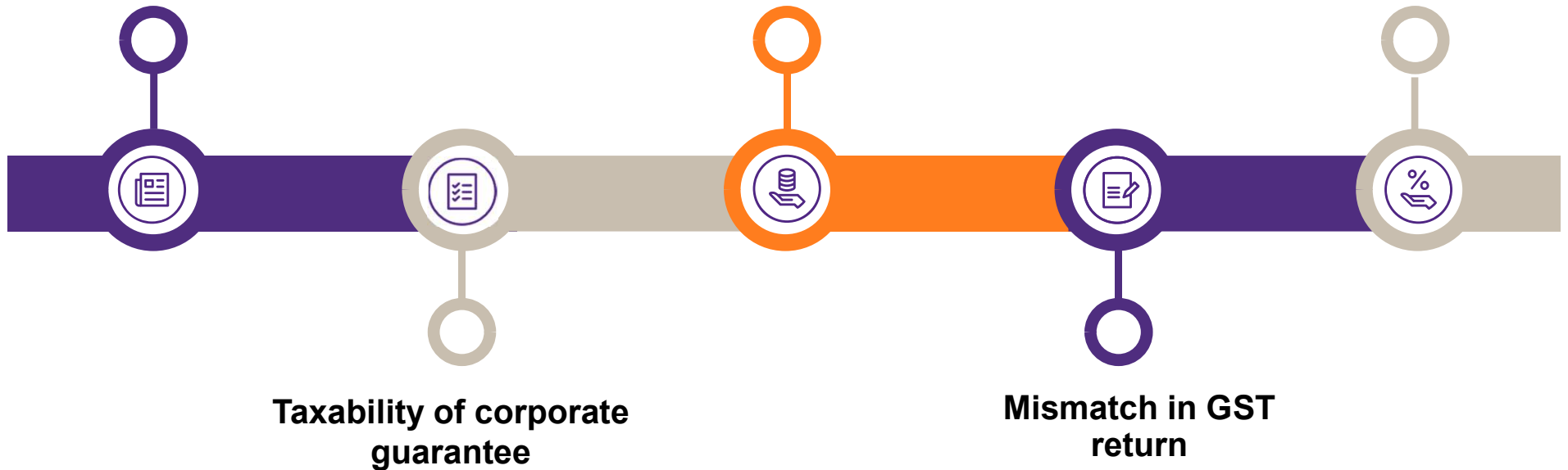
Transfer of investigations initiated by various jurisdictional GST authorities to DGGI is not prohibited under GST laws.

Investigation– Hot issues

Secondment of employees

Input tax credit eligibility

Specific information



DOs and Don'ts



- Comply with the judicial proceedings and attend summon at specified date, time and location
- Obtain complete understanding about the facts, relevant records before causing appearance
- You can politely ask for time incase you are not aware about any particular fact
- Read the order sheet carefully before signing it
- Put current date on every paper you put your signatures
- One can record statement in local language if comfortable



- Refrain from stating any incorrect fact. Request for time instead
- Don't panic in any situation and act wisely and confidently
- Do not explicitly promise to pay any tax or penalty, consult with your tax consultant



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Questions

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