

CHAPTER – VI

Tax Audit, Inspection, Search and Seizure

44. Tax audit

- (1) The assessing authority or an officer authorized to exercise powers under sub-section (1) of section 45 may, for examining the correctness of return or returns filed and admissibility of various claims including input tax credit, undertake tax audit of the records, stock in trade and the related documents of the dealers, who are selected by the Commissioner in the manner, as may be prescribed for the purpose.
- (2) For the purpose of the tax audit, officer empowered to make audit may require the dealer to produce before him records and other documents in his office or at such other public place as may be mentioned in the notice.

Provided that where it is convenient, officer may take up tax audit in the office, business premises or warehouse of the dealer.

- (3) Where tax audit is made by any officer other than the assessing authority of the dealer, such officer shall send audit report prepared by it to the assessing authority of the dealer.
- (5) The dealer shall extend necessary co-operation and assistance in making tax audit.

45. Power to order production of accounts and power of entry, inspection, search and seizure

- (1). Any officer empowered by the State Government in this behalf (hereinafter in this section referred to as the authorized officer), for the purpose of this Act, may require any dealer to produce before him any book, document or account relating to his business and may inspect, examine and copy the same and make such enquiries from the dealer as may be necessary.

Provided that books, accounts and documents of a period more than five years prior to the assessment year shall not be so required, unless

in any special case, for reasons to be recorded, such officer considers it necessary.

- (2). The authorised officer may, at all reasonable times, enter and search any place of business or vehicle, vessel or other building or place where he has reason to believe that the dealer keeps or is for the time being keeping any book, register, document, account or goods relating to his business:

Provided that no residential accommodation (not being a place of business cum residence) shall be entered into, inspected or searched by such officer unless specially authorised in this behalf by the Commissioner in writing.

- (3). All books, documents, and accounts maintained by a dealer in the ordinary course of business, the goods in his possession and his place of business, vessel or vehicle shall be open to search and inspection at all reasonable times by the authorised officer.
- (4). If the authorised officer while examining any books, accounts or documents or conducting search or inspection has reasonable grounds for believing that any dealer is trying to evade liability of payment of tax or other dues under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any account, register or document, he may seize such account, register or document as may be necessary. The authorised officer shall forthwith grant a receipt for the same and shall be bound to return them to the dealer or the person from whose custody they were seized, within a period of ninety days from the date of seizure after having such copies or extracts taken therefrom as may be considered necessary, provided the dealer or the aforesaid person gives a receipt in writing for the account, register or document returned to him. The officer may, before returning the account, register or documents, affix his signature and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signature and seal of such officer have been affixed on each account, register or documents.
- (5). Notwithstanding anything contained in sub-section (4), the officer seizing any account, register or other document under that sub-section may, for reasons

to be recorded by him in writing and with the prior approval of the Commissioner, retain such account, register or document for such period not extending beyond thirty days from the date of completion of all the proceedings under this Act in respect of the years for which they are relevant, as he deems necessary.

(6).An officer conducting search or inspection under sub-section (3) -

- (i) shall have the power to seal the place of business, vehicle, any box, almirah or other receptacle found on such place of business or vehicle in which he has reason to believe that any account, register or other documents or goods are kept or contained, if the owner or other person in occupation or in-charge of such office, shop, godown, vessel, vehicle, box, almirah or other receptacle leaves the place or is not available or fails or refuses to open it when called upon to do so;
- (ii) where the owner or other person in occupation or in charge of the office, shop, godown, vessel or vehicle or the box almirah or other receptacle found in the place of business, or vehicle is present but leaves the place or after an opportunity having been given to him to do so, fails to open, as the case may be, such office, shop, godown, vessel or vehicle or the box, almirah or other receptacle may break open the same and prepare a list of the goods and documents found therein.

(7). No person shall tamper with any seal put under sub-section (6).

(8). Any authorized officer while making search or inspection under this section may require any dealer or the other person to give any information likely to be in his possession or knowledge in respect of such books, documents, accounts or goods as are found at the time of search, inspection or seizure under this section.

(9) The officer who has made inspection, search or seizure of any books, accounts or documents or has investigated into the liability of tax of a dealer shall, on the basis of facts found and enquiry made, prepare a report in respect of such inspection, search, seizure or investigation and where the officer preparing the report is an officer different from the assessing authority,

he shall forward a copy of such report to the assessing authority of the dealer.

(10) Where the officer preparing the report referred to in sub-section (9), is of the opinion that liability of payment of tax by the dealer in addition to liability of payment of tax admitted by such dealer may exceed rupees one lakh, he shall, before forwarding copy of report referred to in sub-section (9), serve the dealer with a notice stating facts to show cause why adverse inference should not be drawn on the basis of such facts. The dealer on receipt of such notice shall submit his reply to such officer in two copies. Thereafter the officer shall forward to the assessing authority a copy of report, a copy of show cause notice issued and a copy of reply received from the dealer, if submitted by the dealer along with its comments on the reply submitted by the dealer.

(11) The provisions of section 100 and 165 of Code of Criminal Procedure, 1973 shall, as far as may be, apply in relation to any entry, or search or inspection under this section, as they apply in relation to any inspection or search under the said code.

Explanation : In calculating the period specified in sub-section (4) the period during which proceedings under this Act remain stayed under the orders of any Court or authority, shall be excluded.

46 Power of search, inspection and seizure in case of a person other than dealer

Where a person carries on any activity ancillary or incidental to or in connection with business of a dealer, any officer authorized under sub-section (1) of section 45, for the purpose of investigation into tax liability of a dealer, subject to provision of sub-section (11) of section 45, may exercise powers under sub-section (1) to sub-section (10) of the said section.

Explanation: For the purpose of this section, following persons shall be deemed to carry on activities ancillary or incidental to or in connection with the business of a dealer:

- (i) broker or canvassing agent who acts as mediator between purchaser and seller of goods; or
- (ii) transporter or any other carrier or a forwarding agent of goods; or
- (iii) person who fabricates or manufactures any goods for a dealer; or
- (iv) person who takes delivery or who dispatches goods on behalf of a dealer; or
- (v) person who holds in custody any goods belonging to a dealer; or
- (vi) person who possesses books, accounts or documents relating to business of a dealer; or
- (vii) person who handles goods of a dealer in any other capacity.

47. Power to seek information, to issue summons etc.

- (1). Any officer, not being an officer below the rank of an assessing authority, may require any dealer or other person to furnish any information which may be, or is in his knowledge or possession.
- (2). All officers under this Act shall have the same powers as are vested in a court under the Civil Procedure Code 1908, when trying a suit in respect of following matters, namely -
 - (i) Enforcing the attendance of any person and examining him on oath or affirmation.
 - (ii) Compelling the production of documents, and
 - (iii) issuing commission for the examination of witness;
 and any proceeding before any of the officers aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 and for the purpose of section 196 of the Indian Panel Code.
- (3). Summons for the production of documents or the attendance of any person shall be issued in the prescribed form.

48 . Power to seize goods

- (1) An officer authorised under **sub-section (1) of section 45** shall have the powers to seize any goods -
 - (i) which are found in a dealer's place of business, vehicle, vessel or any other building or place ; or
 - (ii) which, such officer has reason to believe to belong to the dealer and which are found in any place of business, vehicle, vessel or any other building or place, but are not accounted for by the dealer in his accounts, registers or other documents maintained in the ordinary course of his business.

Provided that a list of all the goods seized under this sub-section shall be prepared by such officer and be signed by the officer and not less than two witnesses.

- (2) Where any officer referred to in sub-section (1) has reason to believe that the goods found in any vehicle, vessel, building or place are not traced to any bonafide dealer or that it is doubtful if such goods are properly accounted for by any dealer in his accounts, registers or other documents, maintained in the ordinary course of his business, he shall have power to seize such goods, and the remaining provisions of this section shall mutatis mutandis apply in relation to such seizure.
- (3) An officer seizing the goods under sub-section (1) shall take all the measures necessary for their safe custody and forward the list, referred to in the proviso to sub-section (1), along with other documents relating to the seizure to the assessing authority concerned.
- (4) The said assessing authority shall serve on the dealer or, as the case may be, the person in charge of the goods at the time of seizure (hereinafter in this section referred to as the person in charge) a notice in writing requiring him to show cause, why a penalty should not be imposed.
- (5) If such authority, after taking into consideration the explanation, if any, of the dealer or, as the case may be, the person in charge and giving him an opportunity of being heard, is satisfied that the said goods were omitted from being shown in the accounts, registers and other documents referred to in sub-section (1), it shall pass an order imposing a penalty not exceeding forty per cent of the value of such goods, as he deems fit.
- (6) A copy of the order imposing penalty under sub-section (5) shall be served on the dealer or, as the case may be, the person in charge.
- (7) The officer seizing the goods shall serve on the dealer or, as the case may be, the person in charge an order in writing mentioning the fact of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty likely to be imposed, on deposit whereof in cash, the goods so seized may be released in favour of the dealer or, as the case may be, the person in charge:

Provided that the Commissioner or such other officer, not below the rank of a Deputy Commissioner, as may be authorised in this behalf by the Commissioner, may, for sufficient reasons to be recorded in writing, direct that the goods be released without any deposit or on depositing such lesser amount, or furnishing security in such form other than cash or indemnity bond, as he may deem fit.

- (8) The penalty or such part thereof as remains after adjustment of any amount deposited under sub-section (7) shall be deposited in the prescribed manner within thirty days of the date of service of the copy of the order imposing the penalty. In default, the assessing authority shall cause the goods to be sold in such manner as may be prescribed and apply the sale proceeds thereof towards the penalty imposed, and subject to the provisions of section 40, refund the balance, if any, to the dealer or, as the case may be, to the person-in-charge.
- (9) Where the officer seizing the goods, before forwarding the list and other documents referred to in sub-section (3), or the assessing authority at any time thereafter, is of the opinion that the goods are subject to speedy and natural decay or where the tax assessed or penalty imposed, as the case may be, is not deposited in accordance with the provisions of this Act, the officer seizing the goods or the assessing authority, as the case may be, may, without prejudice to any other action that may be taken in accordance with other provisions of this Act, cause the goods to be sold by public auction in the prescribed manner. The sale proceeds of such goods shall be adjusted towards the expenses of tax assessed or penalty imposed. The balance, if any, shall be refunded to the dealer or, as the case may be, the person-in-charge in accordance with the provisions of sub-section (8).

If the amount deposited under sub-section (7) is more than the amount of penalty imposed under sub-section (5), the excess amount so deposited shall be refunded to the dealer or, as the case may be, the person in-charge by the authority with whom it was so deposited, in accordance with the provisions of section 40.