

GST UPDATES

1. Class of Persons exempted from Aadhar Authentication - NOTIFICATION NO. 03/2021-Central Tax dated 23.02.2021

Section 25(6D) of CGST Act, states that provisions of sub-sections 6A or 6B or 6B to section 25 shall not be applicable to such class of persons specified by a Notification. Accordingly, as per aforesaid notification, provisions of sub-sections 6B and 6C of section 25 shall not apply to following class of persons. Hence, these persons are exempted from aadhar authentication in order to be eligible for grant of registration.

Provisions of sub-section 6B or Sub-section 6C of section 25 shall not apply to a person who is –

- (a) not a citizen of India; or
- (b) a Department or establishment of the Central Government or State Government; or
- (c) a local authority; or
- (d) a statutory body; or
- (e) a Public Sector Undertaking; or
- (f) a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

2. Procedures to be adopted by the department during Search Operations : F. No. GST/INV/DGOV Reference/20-21-Instructions No. 01/2020-21 [GST-Investigation] dated 02.02.2021

As per section 67 of the CGST Act, 2017, searches are to be carried out in accordance with the provisions of Code of Criminal Procedure, 1973. Thus, following guidelines must be adhered to while carrying out search proceedings:

- i) The officer issuing authorization for search should have valid and justifiable reasons for authorizing a search, which shall be duly

recorded in the file Search should be carried out only with a proper search authorization issued by the Competent Authority.

- ii) The instructions related to generation of DIN for each search authorization shall be scrupulously followed by the officer authorising search.
- iii) The premises of a person cannot be searched on the authority of a search warrant issued for the premises of some other person. Where a search warrant, through oversight, has been issued in the name of a person who is already dead, the authorised officer should report to the Competent Authority and get a fresh warrant issued in the names of the legal heirs.
- iv) In case of search of a residence, a lady officer shall necessarily be part of the search team.
- v) The search shall be made in the presence of two or more independent witnesses who would preferably be respectable inhabitants of the locality, and if no such inhabitants are available or willing, the inhabitants of any other locality should be asked to be witness to the search. PSU employees, Bank employees etc., may, be included as witnesses during sensitive search operations to maintain transparency and credibility. The witnesses should be informed about the purpose of the search and their duties.
- vi) The officers conducting the search shall first identify themselves by showing their identity cards to the person in-charge of the premises. Also, before the start of the search, the officers as well as the independent witnesses shall offer their personal search. After the conclusion of the search all the officers and the witnesses should again offer themselves for their personal search.
- vii) The search authorization shall be executed before the start of the search and the same shall be shown to the person in charge of the premises to be searched and his/her signature with date and time shall be obtained on the body of the search authorization. The signatures of the witnesses with date and time should also be obtained on the body of the search authorization.
- viii) A Panchnama containing truthful account of the proceedings of the search shall necessarily be made and a list of documents/goods/ things recovered should be prepared. It should be ensured that

time and date of start of search and conclusion of search must be mentioned in the Panchnama. The fact of offering personal search of the officers and witnesses before initiation and after conclusion of search must be recorded in the Panchama.

- ix) In the sensitive premises videography of the search proceedings may also be considered and the same may be recorded in Panchnama.
- x) While conducting search, the officers must be sensitive towards the assessee /party. Social and religious sentiments of the person(s) under search and of all the person(s) present, shall be respected at all times. Special care/ attention should be given to elderly, women and children present in the premises under search. Children should be allowed to go to school, after examining of their bags. A woman Occupying any premises, to be searched, has the right to withdraw before the search party enters, if according to the customs she does not appear in public. If any Person in the premises is not well, a medical practitioner may be called.
- xi) The person from whose custody any documents are seized may be allowed to make copies thereof or take extracts therefrom for which he/she may be provided a suitable time and place to take such copies or extract therefrom. However, if it is felt that providing such copies or extracts therefrom pre-judicially affect the investigation, the officer may not provide such copies, If such request for taking copies is made during the course of search, the same may be incorporated in Panchnama, intimating place and time to take such copies.
- xii) The officer authorized to search the premises must sign each page of the Panchnama and annexures. A copy of the Panchnama along with all its annexures should be given to the person in-charge of the premises being searched and acknowledgement in this regard may be taken. If the person in- charge refuses to sign the Panchnama the same may be pasted in a conspicuous place of the premises, in presence of the witnesses. Photograph of the Panchnama pasted on the premises may be kept on record.
- xiii) In case any statement is recorded during the search each page of the statement must be signed by the person whose statement is

being recorded. Each page of the statement must also be signed by the officer recording the statement as 'before me'.

- xiv) After the search is over, the search authorization duly executed should be returned to the officer who had issued the said search authorization with a report regarding the outcome of the search. The names of the officers who had participated in the search should be written on the reverse of the search' authorization. If search authorization could not be executed due to any reason, the same should be mentioned in the reverse of the search authorization and a copy of the same may be kept in the case file before returning the same to the officer who had issued the said search authorization.
- xv) The officers should leave the premises immediately after completion of Panchnama proceedings.
- xvi) During the prevalent COVID-19 pandemic situation, it is imperative to take precautionary measures such as maintaining proper social distancing norms, use of masks and hand sanitizers etc. The search team should take all measures as contained in the guidelines of Ministry of Home Affairs, and Ministry of Health & Family Welfare, and also the guidelines issued by the State Government from time to time