

8th Annual Webinar for GST Professional Members with Swastika Educonsult

ASSESSMENT, INSPECTION, SEARCH AND SEIZURE AUDIT AND MISC TOPICS

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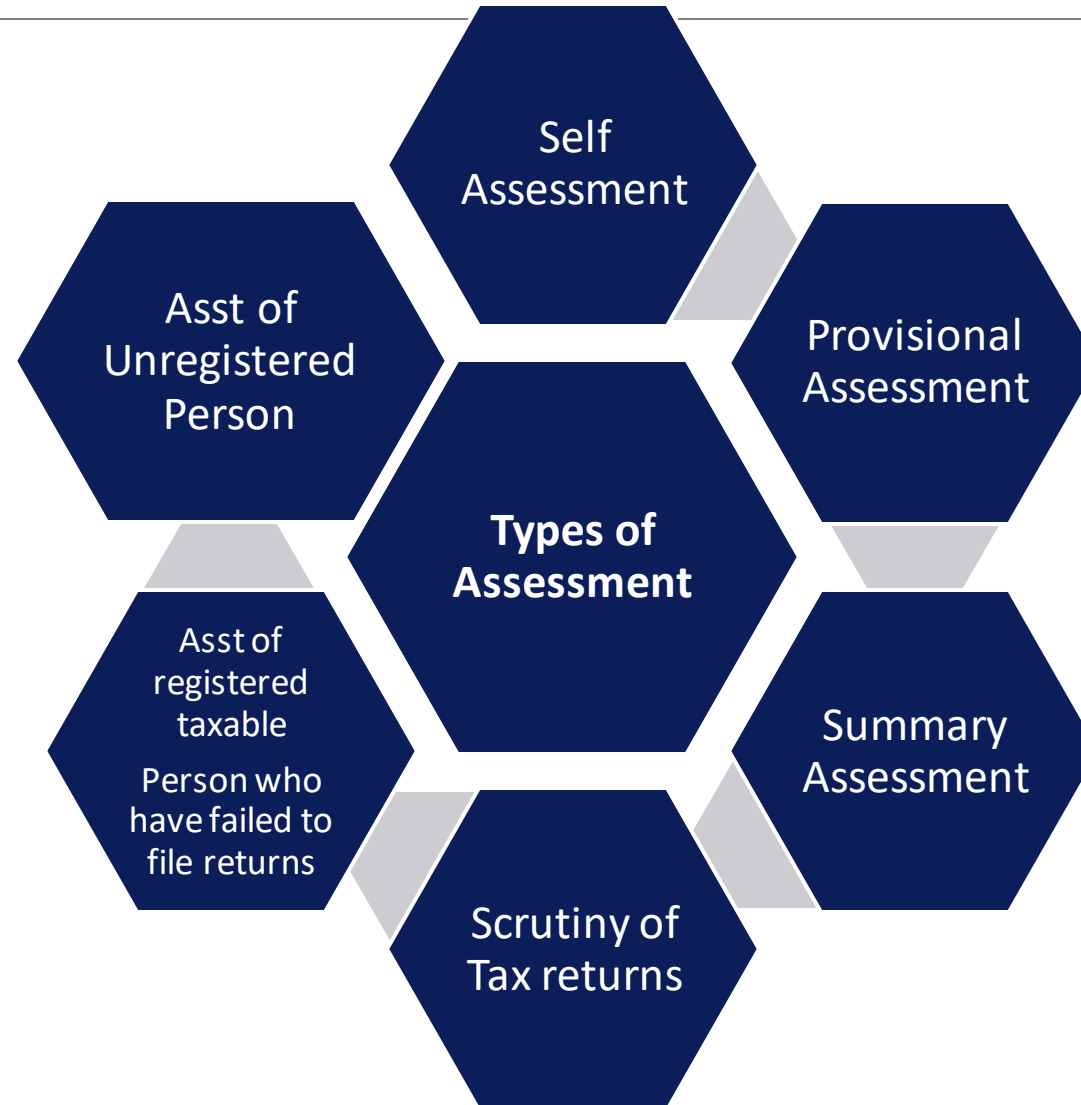
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Assessment



Assessment

ASSESSMENT

As per section 2(11) of the GST ACT the term “assessment means determination of tax liabilities under this act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

Self-Assessment [Sec 59 of CGST Act]

A registered taxable person shall undertake self-assessment of the taxes payable and payable and furnish a return for each tax period as specified in sec 39, which deals with returns. Determination of tax liabilities is to be undertaken by the payer himself and stated in the return to be filed by him.

Provisional Assessment

[Sec 60 of the GST ACT read with RULE 98 of the GST rules]

A supplier will come to know the extent of his tax liabilities which has to be discharged on a continuous and regular basis only after assessment

Provisional assessment, provides a method for determination the tax liability in case the correct tax liability cannot be determined at the time of supply. The provisional assessment has to be finalized within six months unless extended.

On provisional assessment, the supplier can pay tax on provisional basis but only after he executes a bond with security, binding them for payment of the difference between the amount of taxes may be finally assessed and the amount of tax provisionally assessed.

Procedure of provisional assessment

- 1) Provisional assessment may be **invoked by a taxable person** by making a **request/application to the proper officer** and such request may be made only under the following two circumstance-
 - (I) He is unable to determine the **value** of goods and or services, or
 - (II) he is uncertain about the **rate** of tax applicable
- 2) Provisional assessment can be made only upon a written request made by the taxable person and the same **cannot** be resorted to by the **proper officer on suo-motu basis** such person shall furnish an **application** along with the documents in support of his request, electronically in **FORM GST ASMT-01** on the common portal,[rule 98(1)]
- 3) The request indicated specified **ground/reasons** for inability of the applicant
- 4) The proper officer may, on receipt of the application under sub-rule (1), issue a **notice** in **FORM GST ASMT-02** requiring the registered person to furnish **additional information** or documents in support of his request and the applicant shall file a reply to the notice in **FORM GST ASMT-03**, and may appear in person before the said officer if he so desires.

Finalization of provisional assessment

- (1) The proper officer shall pass an **order**, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him within a period **not later than 90 days** from the date of receipt of such request,
- for securing the amount of difference between the provisional assessment and tax as may be finally assessed, the proper officer may also require the taxable persons
 - **To execute a bond, or**
 - **To furnish a surety or security.**
 - The proper officer shall issue an order in **FORM GST ASMT-04** allowing the payment of tax on a provisional basis. He shall also state the amount for which the bond is to be executed / security to be furnished **not exceeding 25 %** of the amount covered under the bond.[rule98(3)]
 - The registered person shall execute a bond in Form GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under rule 98(3).
- 2) The proper officer shall issue a notice in Form **GST ASMT-06**, calling for information and records required for finalisation of assessment and shall issue a final assessment order specifying the amount payable by the registered person or the amount refundable, if any in **Form GST ASMT-07**.



Finalization of provisional assessment (contd.)

3) The proper officer shall be required to finalise the assessment and pass the final assessment order within a period **not exceeding 6 months** from the date of communication of provisional assessment order. However on sufficient cause being shown this period can be extended by

- ❖ Additional/Joint Commissioner → Maximum of 6 months
- ❖ Commissioner → 4 Years

Liability of interest at the time of final assessment

(4) If the amount of tax determined under the final assessment order, is more than the amount specified in the provisional assessment order, then the taxable person shall be liable to pay interest on the shortfall.

Release of security

5) Thereafter the applicant may file an application in Form GST ASMT-08, for release of security furnished earlier.

6) Final order will be issued in **ASMT-09** within a period of 7 working days from the date of receipt of application.



Scrutiny of returns- Section 61

The proper officer may scrutinize the return and shall inform the register persons of discrepancies noticed, if any, and seek his explanation

In case of discrepancy, proper officer shall issue a notice to the said person in **FORM GST ASMT-10**, informing him of such discrepancy and seeking his explanation thereto within a maximum of **thirty days** from the date of service of the notice

The registered person furnish an explanation for the discrepancy in FORM **GST ASMT- 11** to the proper officer. Where the explanation furnished found to be **acceptable**, the proper officer shall inform the registered period in **FORM GST ASMT-12**.

In case, satisfactory response is not received within 30 Days or extended time the proper officer, may, undertake-

- Departmental audit as per section 65
- Special Audit as per section 66
- Inspection, search and seizure as per section 67
- Determination of tax under sec 73 & 74
- the proper officer may subsequently determine tax, interest and penalty due from the taxable person.



ASSESSMENT OF NON-FILERS OF RETURNS

[Sec 62 of the GST Act read with Rule 100(1) of the GST Rules]

- (1) This section is applicable where a registered person fail his returns, which may pertain to any of the following category-
 - return of the tax period in case of a normal taxable person,
 - return in case of a person opting for composition,
 - final return after cancellation of registration.

- 2) Where a registered taxable persons fail to file his return within 15 days of issuance of notice in form **GSTR-3A**, the proper officer may assess the tax liability to the **best of his judgment**, and issue an assessment order in form **GST ASMT-13** within a period of **5 year** form the date specified under sec 44 for furnishing of the annual return for the Financial years to which the tax not paid relates it means that if the transaction of non-filer for FY2017-18, then the officer can pass the order till 31.12.2018 + 5 years i.e. 31.12.2023

- 3) If a **valid return** has been furnished with in **30 days** of service of assessment order, the proper officer may withdraw the said assessment order but the liability for payment of interest under sec 50 or for payment of late fee under Sec 47 shall continue.



Section 63 : Assessment of Unregistered Persons (CGST Act, 2017)

(1)The proper officer may apply best of his judgment for the relevant tax periods and issue an assessment order where.

- A taxable person fail to obtain registration even through liable to do so, or
- Whose registration has been cancelled under sec29(2) but who was liable to pay tax.

(2)The proper officer shall issue a notice to taxable person in Form GST ASMT-14 containing the grounds and after allowing a time of 15 days to such person to furnish his reply, if any, pass an order in Form GST ASMT-15

(3)The assessment order must be issued within a period of 5 years filling of the annual return

(4)No such assessment order shall be passed without a reasonable opportunity of being heard.



Summary Assessment

(Sec 64 read with rule 100 (3) to (5) of the GST Rules)

Circumstances

- Summary assessment is generally used in a tax legislation to denote “fast track assessment” based on return filed by the assessee.
- The proper officer must have sufficient ground or reason to believe that any delay in assessment will adversely impact the interest of revenue. He must have evidence in his possession that the person has incurred, or is likely to incur, a liability to pay tax under Act.

Order of summary assessment

- The summary assessment may be completed where proper officer has taken prior permission of the Additional/Joint Commissioner
- Order of summary assessment shall be issued in Form GST ASMT-16



Inspection, Search and Seizure

Inspection, Search & Survey

Inspection is a softer provision than search which enables officers to access any place of business or of person engaged in transporting goods or who is an owner or an operator of a warehouse or godown. Inspection can be carried out by an officer CGST/SGST only upon a written authorization in **INS -01** given by an officer of the rank Joint Commissioner or above.

Circumstances

Where the proper officer has **REASONS TO BELIEVE not below the rank of Joint Commissioner**, that-

- (a) a taxable person has suppressed any transaction relating to supply or the stock of goods in hand, or has claimed ITC in excess of his entitlement or contravene any of the provisions of this Act or rules to **evade tax under** this Act; or
- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may **authorise in writing** any other officer **to inspect any places of business** of the
- taxable person or
 - the persons engaged in the business of transporting goods or
 - the owner or the operator of warehouse or godown or any other place

Inspection

Sec 67(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that

- any goods liable to confiscation or
 - any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place,
- he may authorise in writing (in **INS-02**) any other officer to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer may serve an order (**Form GST INS-03**) for not to remove or deal with the goods except with the prior permission.

Documents 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.

Sec 67(3) The 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 30 days** of the issue of the said notice.

Search & Survey

Sec 67(4) - The officer authorised shall have the power to seal or break open the door of any premises or 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, where access to such premises, almirah, electronic devices, box or receptacle is denied.

Person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts

Goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security,

Search & Survey

Period of retention of documents or books

- 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 enquiry or proceeding under this Act
- The documents, books, or things produced by a taxable person or any other person ; which have **not been relied upon the issue of notice** under this Act or Rules made thereunder , shall be returned to such person within a period of **not exceeding 30 days** of the issue of the said notice.

If seizure of goods is impractical

The authorised officer may serve on the owner or the custodian of the goods an order of prohibition in **Form GST INS – 03** that shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

The officer seizing the goods document , books or things all prepare in inventory such goods or document or books or things and get is signed by the person from whom such goods or document or books or things are seized

Search & Survey

Power of the Proper Officer

The authorised officer shall have the power-

- To seal or break open the door of any premises, or
- To break open almirah, electronic device, box, receptacle in which any goods, account, register or document of the person are suspected to be concealed, where access to such premises, almirah, electronic device, box or receptacle is denied.

Rights of the person- To take copies of document seized

The person , from whose custody any documents are seized, shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate In this behalf except where making such copies or taking such extract may, in the opinion of the proper officer, prejudicially affect the investigation.

Release of goods on provisional basis

- The goods so seized shall be released, on provisional basis, upon execution of a bond and furnishing of a security, in such manner and such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.



Search & Survey

- The bond for the value of the good shall be executed in Form GST INS-04 and of security shall be furnished in the form of bank guarantee equivalent to the amount of applicable tax, interest and penalty payable **Rule 140(1)**
- In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encased.

Release of the Goods on Provisional Basis

The goods so seized shall be released on a provisional basis, upon execution of a bond in **Form GST INS – 04** and furnishing of security equivalent to the amount of applicable tax, interest & penalty payable.

Release of perishable or hazardous nature goods (Rule 141)

1. Where the goods or things seized are of perishable or hazardous nature, and 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 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 IN-05**, on proof of payment.
2. Where the taxable person fails to pay the amount referred as above in respect of the said goods or things, the Commissioner may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or other amount payable in respect of such goods or things.



Search & Survey

Return of goods where no notice is served

1. Where any goods are seized, but no notice in respect thereof is given within **6 months** of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. However, the period of **6 Months may**, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding **6 months**.

Disposal of goods in specified circumstances

The proper officer may dispose of the goods in such manner as may be prescribed , if such goods pertains to the following class of goods or goods as specified by the Govt. by the notification:-

1. Perishable or hazardous nature of any goods.
2. Depreciation in the value of the goods with the passage of time
3. Constraints of storage space for the goods, or
4. Any other relevant considerations by notification

Refer Notification No.27/2018 – Central Tax dated 13th June 2018



Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

Notification No.27/2018 – Central Tax

New Delhi, the 13th June, 2018

G.S.R....(E).- In exercise of the powers conferred by sub-section (8) of section 67 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government hereby notifies the goods or the class of goods (hereinafter referred to as the said goods) mentioned in the Schedule below, which shall, as soon as may be after its seizure under sub-section (2) of section 67 of the said Act, be disposed of by the proper officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods.

Schedule

- (1) Salt and hygroscopic substances
- (2) Raw (wet and salted) hides and skins
- (3) Newspapers and periodicals
- (4) Menthol, Camphor, Saffron
- (5) Re-fills for ball-point pens
- (6) Lighter fuel, including lighters with gas, not having arrangement for refilling
- (7) Cells, batteries and rechargeable batteries
- (8) Petroleum Products
- (9) Dangerous drugs and psychotropic substances
- (10) Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
- (11) Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
- (12) Fireworks
- (13) Red Sander
- (14) Sandalwood
- (15) All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
- (16) All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.
- (17) Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under sub-section (6) of section 67 of the said Act, but provisional release has not been taken by the concerned person within a period of one month from the date of execution of the bond for provisional release.

[F. No. 349/58/2017 – GST (Pt.)]

Power to make Sample purchase – Sec 67(12)

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and

→ on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.



Section 68: Inspection of Goods in Movement

Section 68

- (1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.
- (2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.
- (3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

Rule 55: Transportation of Goods without issue of Invoice – Delivery Challan

Rule 55A: Tax Invoice or bill of supply to accompany transport of goods (Inserted w.e.f. 23.01.2018)

The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.



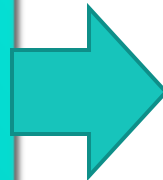
Section 69: Power to Arrest

Powers to Arrest [Section 69 of CGST Act]

Where the Commissioner has reason to believe that a person has **committed any offence** specified in clause (a), clause (b), clause (c), clause (d) of sec 132(1) **which is punishable** under clause (i) or clause (ii) of sec. 132(1) or 132(2) he may by order authorise any officer of central tax to arrest such person.

Sec 132(1) This section deals with offences -

- (a) Supplies any goods or services or both without issue of invoice with the intention to evade tax**
- (b) Issues any invoice or bill without supplies leading to wrongful availment or utilisation of input tax credit or refund of tax**
- (c) Avails input tax credit using invoice or bill referred to in b) above**
- (d) Collects any amount as tax but fails to pay the same beyond the period of 3 months from the date on which payment becomes due.**



Sec 132 Which are punishable with

In cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken

- (i) exceeds INR 5 Cr, with imprisonment for a term which may extend to 5 years and with fine;**
- (ii) exceeds INR 2 Cr but does not exceed INR 5 Cr., with imprisonment for a term which may extend to 3 years and with fine**

Sec 132(2) - If any person convicted of an offence under this section is **again convicted** of an offence under this section, then he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to **5 years** and with fine

Powers to Arrest [Section 69 of CGST Act]

Where the Commissioner has reason to believe that a person has committed any offence specified in clause (a), clause (b), clause (c), clause (d) of sec 132(1) which is punishable under clause (i) or clause (ii) of sec. 132(1) or 132(2) he may by order authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of [section 132](#), the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973,—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of [section 132](#), he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.



Section 132 - Punishment for Certain Offences

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be noncognizable and bailable

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be **cognizable and non-bailable**.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.



Section 70: Power to issue Summon

Section 71: Access to business premises

Section 72 - Officers to assist proper officers

70. Power to summon persons to give evidence and produce documents

- (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.
- (2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.



71. Access to business premises

- (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect
- books of account,
 - documents,
 - computers,
 - computer programs,
 - computer software whether installed in a computer or otherwise and
 - such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.



71. Access to business premises

- (2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under Section 66—
- (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
 - (ii) trial balance or its equivalent;
 - (iii) statements of annual financial accounts, duly audited, wherever required;
 - (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
 - (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
 - (vi) any other relevant record,

for the scrutiny by the officer or audit party or the CA or CWA within a period **not exceeding 15 working days** from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.



72. Officers to assist proper officers

1. All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax s **hall assist the proper officers** in the implementation of this Act.
2. The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner



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Thank You