

**Punit Prajapati
& Co.**

NO RECOVERY DURING GST SEARCH

**CBIC INSTRUCTION NO.
1/2022 -23 [GST
INVESTIGATION]
DATED 25/05/2022**

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WHAT INSTRUCTION NO. 1/2022-23 SAYS

NO RECOVERY DURING SEARCH/INSPECTION

- "Recovery" can't be made unless amount becomes payable in pursuance of an order passed by adjudicating authority.
- Therefore, there may not arise any situation where "Recovery" of tax dues has to be made by tax officers during search/inspection/investigation
- Taxpayer may pay voluntarily but shall not be forced by officers during the search for payment.
- There may not be any circumstances necessitating "Recovery" of tax during the course of search/inspection/investigation proceedings.



STRICT DISCIPLINARY ACTION IF FORCE OR COERCION FOUND

If any wrongdoing on the part of any officer is found after inquiry on complaint filed by a taxpayer, strict disciplinary action as per law, may be taken against defaulting officers.




ANALYSIS

NO RECOVERY WITHOUT SCN

Unless proper SCN is issued and adjudication process is followed and order is passed, recovery can't be made. Needless to mention that Provisional Recovery may be made by the officers, but it can't be during search/inspection through the forceful or coercion action or using DRC-03 which is made available to taxpayer for voluntary payment.

HIGH COURTS ARE AGAINST RECOVERY DURING SEARCH



Various High Courts have already taken views that such recovery by the officers during the search proceedings may not be voluntarily and is not proper and not according to the scheme of law. Refer Hon'ble Gujarat High Court [Bhumi Associates V/s. UoI], Hon'ble Karnataka High Court [BUNDL Technologies Private Limited], Hon'ble Rajasthan High Court [Dhariwal Products V/s. UoI], Madras High Court [Shrinandhidhall Mills India Private Limited]