

Chapter XII

Inspection, Search, Seizure and Arrest

FAQ'S

Power of inspection, search and seizure (Section 67)

Q1. What is the meaning of the term "Search"?

Ans. The term 'search', in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under proper and valid authority of law.

Q2. What is the meaning of the term "Inspection"?

Ans. It is a softer provision than search to enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

Q3. What is the meaning of the term "Seizure"?

Ans. In Law Lexicon Dictionary, 'seizure', is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

Q4. Who can authorize the act of carrying out 'Inspection' and under what circumstances?

Ans. As per Section 67(1), Inspection can be carried out by any officer of Central tax only upon a written authorization given by a proper officer not below the rank of Joint Commissioner. The proper officer can give such authorization only if he has reasons to believe that the person concerned has –

- (a) suppressed any transaction of supply;
- (b) suppressed stock of goods in hand;
- (c) claimed excess input tax credit;
- (d) contravened any provisions of this Act or rules made thereunder to evade tax;
- (e) a transporter or a warehouse owner has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

Q5. Which are the places of business / premises which can be inspected by the CGST officer under this section?

Ans. CGST officer authorized by the proper officer shall have the powers to carry out inspection of any of the following places / premises:

- (a) any place of business of a taxable person;
- (b) any place of business of a person engaged in the business of transporting goods;
- (c) any place of business of an owner or an operator of a warehouse or godown;
- (d) any other place

Q6. Who can order for search and seizure and under what circumstances?

Ans. Proper officer not below the rank of Joint Commissioner can authorize himself or any other CGST officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the proper officer 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 / hidden in any place.

Q7. What is meant by 'reasons to believe'?

Ans. Reason to believe is to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. As per Section 26 of the IPC, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise." 'Reason to believe' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.

Q8. Is it mandatory that such 'reasons to believe' has to be recorded in writing by the proper officer, before issuing authorization for Inspection or Search and Seizure?

Ans. Although the officer is not required to state the reasons for such belief before issuing an authorization for search, but he should disclose the material on which his belief was formed. 'Reason to believe' need not be recorded invariably in each case.

Q9. What powers can be exercised by an officer during search?

Ans. An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents, books or things (relevant for any proceedings under the Act) from the premises searched. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods,

account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied.

Q10. Whether goods seized can be released on a provisional basis?

Ans. Yes. The seized goods can be released on provisional basis upon execution of a bond and furnishing of security of such quantum and in such manner, or on payment of applicable tax, interest and penalty.

Q11. What are the safeguards provided in section 67 in respect of search and seizure?

Ans. The following are the safeguards provided in section 67 in respect of search and seizure:

- (a) Seized goods or documents should not be retained beyond the period necessary for their examination.
- (b) Photocopies of the documents can be taken by the person from whose custody documents are seized.
- (c) In respect of seized goods, if a notice is not issued within six months of its seizure, such goods shall be returned to the person from whose possession it was seized. This period of six months can be extended on justified grounds up to a further period not exceeding six months.
- (d) An inventory of seized goods shall be prepared by the seizing officer.
- (e) Certain notified categories of goods such as perishable, hazardous, depreciation in value of the goods with the passage of time etc. can be disposed of immediately after seizure.
- (f) Provisions of Code of Criminal Procedure 1973 relating to search and seizure shall apply.

Q12. What is the procedure for conducting search?

Ans. Section 67(10) prescribes that search must be carried out in accordance with the provisions of Code of Criminal Procedure, 1973.

Inspection of goods in movement (Section 68)

Q13. Is there any special document required to be carried during transportation of taxable goods?

Ans. Yes. The person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount to carry with him such documents and devices as may be prescribed by the Government. On interception of the conveyance, the person in charge shall produce the prescribed documents and devices for verification and allow inspection of goods by the proper officer.

Power to arrest (Section 69)

Q14. What is a cognizable offence?

Ans. Generally, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a Court.

Q15. What is a non-cognizable offence?

Ans. Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without the permission of a Court.

Q16. When can, the proper officer authorize arrest of any person under section 69?

Ans. The Commissioner of CGST, by order, can authorize any CGST officer to arrest a person, if he has reasons to believe that such person has committed an offence specified in clause (a) or (b) or (c) or (d) of section 132(1) which is punishable under clause (i) or (ii) of section 132(1) or section 132(2) of the Act. This essentially means that a person can be arrested only when the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds Rs.2 Crores or where a person has earlier been convicted for an offence under section 132 of the Act.

Q17. What are the safeguards provided for a person who is placed under arrest?

Ans. The following are the safeguards provided for a person who is placed under arrest

- (a) If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest;
- (b) If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner of CGST can release him on bail and he will be subject to the same provisions as an officer in-charge of a police station under section 436 of the Code of Criminal Procedure, 1973;

All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Power to summon persons to give evidence and produce documents (Section 70)

Q18. When can the proper officer issue summons?

Ans. Section 70(1) gives powers to the proper officer to call upon any person by issuing a summon to be physically present before him to either give evidence or produce a document or any other thing in any inquiry which an officer is making.

Q19. What are the responsibilities of the person so summoned?

Ans. A person who is issued summon is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject, which is the subject matter of examination and to produce such documents and other things as may be required.

Q20. What can be the consequences of non-appearance to summons?

Ans. The proceeding before the proper officer who has issued summons is deemed to be judicial proceedings. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case he gives false evidence, he can be prosecuted under section 193 of the IPC.

Access to business premises (Section 71)

Q21. Can the proper officer access business premises of a registered taxable person?

Ans. Yes. An audit party of CGST or a cost accountant or chartered accountant nominated under section 66 have access to any business premises without issuance of a search warrant for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. However, a written authorization is to be issued by a proper officer not below the rank of Joint Commissioner. This provision facilitates access to any business premises of a taxable person where books of accounts, documents, computers etc. are kept which are required for audit or verification by an audit party or a nominated cost accountant or chartered accountant.

Officers required to assist proper officers (Section 72 of CGST Act and 11 of UTGST Act)

Q22. Are there any other class of officers who are required to assist proper officers in implementation of CGST Act?

Ans. Under section 72, the following officers are required to assist proper officers in the implementation this Act. The categories specified in Act are as follows:

- (a) Police
- (b) Railways
- (c) Customs
- (d) Officers of State/Union Territory engaged in collection of GST

- (e) Officers of State/Central Government engaged in collection of land revenue
- (f) All village officers
- (g) Any other class of officers as may be notified by the Government.

MCQ'S

Power of inspection, search and seizure (Section 67)

Q1. Initiation of action under this section is by a Proper Officer not below the rank of

- (a) Superintendent
- (b) Inspector
- (c) Joint Commissioner
- (d) Commissioner

Ans. (c) Joint Commissioner

Q2. Which are the places of business / premises which can be inspected by the proper officer under this section?

- (a) Any places of business of a taxable person
- (b) Any places of business of a taxable person engaged in the business of transporting goods
- (c) Any places of business of an owner or an operator of a warehouse or godown
- (d) Any other place
- (e) All of the above

Ans. (e) All of the above

Q3. Is it mandatory that 'reasons to believe' must exist before issuing authorization for Inspection or Search and Seizure by the proper officer?

- (a) Yes
- (b) No
- (c) None of the above

Ans. (a) Yes

Q4. Can the seized goods be released on provisional basis upon execution of a bond and furnishing of security or on payment of applicable tax, interest and penalty?

- (a) Yes
- (b) No

- (c) At proper officer's discretion
- (d) None of the above

Ans. (a) Yes

Power to arrest (Section 69)

Q5. All arrests should be made as per the provisions of

- (a) Code of Criminal Procedure, 1973
- (b) Civil Procedure Code
- (c) Indian Penal Code
- (d) Foreign Exchange Management Act

Ans. (a) Code of Criminal Procedure, 1973

Power to summon persons to give evidence and produce documents (Section 70)

Q6. When can the proper officer issue summons to call upon a person?

- (a) To give evidence
- (b) Produce a document
- (c) Produce any other thing in an enquiry
- (d) All of the above

Ans. (d) All of the above

Q7. What can be the consequences of non-appearance to summons?

- (a) Prosecution under section 172, 174, 175 and 193 of the Indian Penal Code as the case may be
- (e) Arrest under Code of Criminal Procedure, 1973
- (b) Arrest under Foreign Exchange Management Act
- (c) None of the above

Ans. (a) Prosecution under section 172, 174, 175 and 193 of the Indian Penal Code as the case may be

Access to business premises (Section 71)

Q8. The documents called for should be provided within.....

- (a) 20 working days
- (b) 15 working days

(c) 5 working days

(d) 45 working days

Ans. (b) 15 working days

Officers required to assist proper officers (Section 72 of CGST Act and 11 of UTGST Act)

Q9. The Officer is empowered to assist the proper officer.

(a) Police/Customs

(b) Health

(c) CBI

(d) State Excise

Ans. (a) Police/Customs