

## Chapter XIV

# Inspection, Search, Seizure and Arrest

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### 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 in **Form GST INS-01** given by a proper officer not below the rank of Joint Commissioner. Such proper officer can give such authorization only if he has reasons to believe that has –

- (a) Taxable person has suppressed any transaction of supply;
- (b) Taxable person has suppressed stock of goods in hand;
- (c) Taxable person has claimed excess input tax credit;
- (d) Taxable person has contravened any provisions of this Act or rules made thereunder to evade tax;
- (e) Transporter or an owner or operator of a warehouse or godown or any other place, 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 not below the rank of Joint Commissioner 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 or 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 himself or authorize any other CGST officer in **FORM GST INS-01** (Chapter-XVII-Inspection, Search and Seizure of the CGST Rules) 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**. Where any goods, documents, books or things are liable for seizure, the proper officer or an authorised officer shall make an order of seizure in **FORM GST INS-02**.

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. Reference here can be made to the judgement of Crompton Greaves Ltd Vs. State of Gujarat 120 STC 510 where in the Court observed that "these words suggest that belief must be that of a honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumour."

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 seal or break open the door of the any 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, electronic devices, box, receptacle if access to such almirah, electronic devices, box, receptacle is denied and in which any goods, account, registers or documents are suspected to be concealed.

Q10. What measures can be taken by the Proper officer when the goods are not practicable to seize?

Ans. Where it is not practicable to seize any goods, the Proper officer or any authorised officer may serve a prohibitory order in **FORM GST INS-03** on the owner or the custodian of the goods that he shall not remove, part with or otherwise deal with the goods except with the prior permission of such officer.

Q11. 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 for the value of goods in **FORM GST INS-04** and furnishing of security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable, or on payment of applicable tax, interest and penalty payable.

Q12. 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 6 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 6 months.
- (d) In respect of documents, books or things, which have not been relied upon for the issue of notice, it shall be returned within a period not exceeding 30 days of the issue of the said notice.
- (e) An inventory of seized goods shall be prepared by the seizing officer.

- (f) Certain notified categories of goods such as perishable or hazardous nature, depreciation in value of the goods with the passage of time etc..(Notification no 27/2018 (CT) dtd.13.06.2018 – specifies Schedule of such goods) can be disposed of immediately after seizure. However, 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 is or may become payable, whichever is lower, on proof of such payment, the Proper officer shall order for release such goods or things, in **FORM GST INS-05**.
- (g) Provision of Code of Criminal Procedure 1973 relating to search and seizure shall be applicable to the GST Laws and in section 165(5) thereof, the word 'Magistrate' should be read as 'Commissioner'.

Q13. What is the procedure for conducting search?

Ans. Section 67(10) prescribes that search must be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973. Section 100 of the Code of Criminal Procedure describes the procedure for search and seizure.

### **Inspection of goods in movement (Section 68)**

Q14. 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. Rule 138A of the CGST Rules, 2017 provides for the following documents and devices to be carried:-

- a) the invoice or bill of supply or delivery challan, as the case may be; and
- b) copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner

Q15. What are the various forms prescribed in case of interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances?

Ans. The various forms prescribed are listed below:-

Sl. No.	Form	Purpose	Remarks
1.	FORM GST MOV01	For recording statement of the person in charge of the conveyance	On failure to produce document or proper officer intends to undertake an inspection
2.	FORM GST MOV-02	An order for physical verification/inspection of the conveyance, goods and documents	At the place mentioned in such order
3.	FORM GST MOV-03	For taking permission , for extension of time beyond three days of concluding the inspection proceedings	Extendable with the permission of commissioner
4.	FORM GST MOV-04	Report of such physical verification	On completion of the physical verification/ inspection of conveyance/goods in movement
5.	FORM GST MOV-05	Release order to allow the conveyance to move further	After the amount of tax and penalty has been paid
6.	FORM GST MOV-06	An order of detention of goods	Where discrepancies found and goods and conveyance need to be detained.
7.	FORM GST MOV-07	Notice specifying the tax and penalty payable	Served on the person in charge of the conveyance
8.	FORM GST MOV-08	Bond for release of goods and conveyance	Along with a security in the form of bank guarantee
9.	FORM GST MOV-09	Form for release of goods on payment of tax and penalty.	After considering objections filed against the proposed amount of tax and penalty
10.	FORM GST MOV10	Notice proposing confiscation of the goods and conveyance and imposition of penalty.	Proposed tax and penalty not paid within 7 days from the date of detention order
11.	FORM GST MOV-11	An order of confiscation of goods	Remittance of sale proceeds to the Government

### Power to arrest (Section 69)

Q16. What is meant by the term "arrest"?

Ans. The term 'arrest' has not been defined in the CGST/SGST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant

Q17. 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.

Q18. What is a non-cognizable offence?

Ans. Non-cognizable offence means an offence 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.

Q19. 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 ₹ 2 Crores (imprisonment for a term up to 1 year with fine) or ₹ 5 Crores (imprisonment for a term up to 5 years with fine).

Q20. 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 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

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)**

Q21. 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 in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

Q22. 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.

Q23. 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)**

Q24. Can the proper officer access business premises of a registered taxable person?

Ans. Yes. An audit party of CGST, deputed by proper officer 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 revenue carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of. Further, in terms of Section 71(1), an officer authorised by a proper officer not below the rank of Joint Commissioner can also have access business premises of a registered person.

Q25. What is the distinction in law between 'Seizure' and 'Detention'?

Ans. Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. Seizure is taking

over of actual possession of the goods by the department. Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

Q25. Which Records or documents shall a person in charge of a place referred in Sec. 71(1) shall on demand make available to the Authorised Officer / Audit party deputed by proper officer or a cost accountant or chartered accountant nominated under section 66 ?

Ans. The person in charge of a place shall on demand, make the following available:

- (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,
- (vii) for the scrutiny by the officer or audit party or the chartered accountant or cost accountant

### **Officers required to assist proper officers (Section 72 of the CGST Act, 2017 and Section 11 of the UTGST Act, 2017)**

Q26. Are there any other class of officers who are required to assist proper officers in implementation of the CGST Act,2017?

Ans. Under Section 72 of the CGST Act,2017, the following officers are required to assist proper officers in the implementation of 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 or any other place.
- (d) All of the above

Ans. (d) *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

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 the CGST Act, 2017 and 11 of the UTGST Act, 2017)**

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

(a) Police/Customs

(b) Health

(c) CBI

(d) State Excise

Ans. (a) *Police/Customs*