



Inspection, Search, Seizure and Arrest

Power of Inspection, Search and Seizure [Sec. 67]:

-Powers of Inspection: It enables officers to access any POB of **taxable person** & also any POB of a person engaged in **transporting** goods or who is an **owner** or an **operator of a warehouse/ godown**. PO upon written authorization by officer of rank **Joint Commissioner or above** carries out inspection.

• Circumstances for carrying out inspection: JC/above rank officer give inspection authorization if he has reason to believe that:

(a) **taxable person** has done one of the following:-

- i. **suppressed** any transaction of **supply** of goods/services;
- ii. **suppressed stock** of goods in hand;
- iii. claimed **ITC in excess** of his entitlement;
- iv. **contravened** any provision of GST Act to evade tax;

(b) person engaged in **transporting** goods or **owner/operator of warehouse/godown/other place** has:

- i. **kept goods** which have **escaped tax payment**
- ii. kept his **accounts/goods** in a manner that is **likely to cause tax evasion**

• Reason to Believe: Having sufficient cause to believe a thing; an objective determination based on intelligent care & evaluation rather than a purely subjective consideration. It is more than a mere suspicion but less than evidence in possession about violation of law.

-Powers of Search and Seizure: If **goods liable for confiscation** or relevant **documents/BOA** useful for tax proceedings are suspected to be **secretly stored**, dept. can conduct a search & seize them. Search & seizure can be carried out by officer of rank **Joint Commissioner or above** or an officer authorized by them (not below their rank).

• General meaning of Terms:

Search: **Examination** of a place or person for hidden evidence.

Seizure: Taking **possession** of goods/documents contrary to the owner's will, under legal authority.

• Scope of Seizure: Includes inputs, capital goods, movable/immovable property, records, databases, & anything aiding proceedings or protecting govt. revenue.

• Person whose documents/BOA are seized has right to **take copies** of same with PO's approval.

Powers of Officer during search:

• An officer carrying out a search has power to **search for & seize goods** (which are liable to confiscation) & **documents/books/things** (relevant for GST proceedings) from premises searched.

• If it is **not** practicable to **seize** any such goods, then same may be **detained** i.e. he may order owner/custodian to **not remove or part with** goods except with PO's permission.

• During search, PO has power to **break open door** of premises autho. to be searched if access denied.

• He can also **break open any almirah or box** if access to such almirah or box is denied & in which any goods/accounts/registers/docs. are suspected to be concealed.

• He can also **seal the premises** if access to it denied.

- Person from whom records/documents are seized shall be entitled to **take copies/extracts of seized records** in presence of any autho. officer at a place & time indicated by PO.

- Taking copies/extracts may be **denied** where in PO's opinion, it may **prejudicially affect investigation**.

- Seized documents/books/things shall be retained only till the time same are required for examination /enquiry/proceedings & if not relied on for, then same shall be returned **within 30 days** of SCN.

Release of Goods:

• Provisional Basis: Upon bond execution or security furnishing or payment of tax, int. & penalty.

- Actual Return: Goods returned if no notice is issued within **6 months (+ 6 months)**.
- Disposal: **Perishable/hazardous goods** disposed of following prescribed manner.

Procedure for Conducting Search: Search carried out as per **Sec. 100** of Criminal Procedure Code, 1973.

Basic requirements to be observed during search operations:

- No search can be carried out without **valid search warrant**.
- **Lady officer** must accompany search team to a residence.
- Officers must **show ID cards** and disclose identity to person in-charge of premises.
- Search warrant should be executed before search start & **signed by person in charge & 2 witnesses**.
- Presence of at least **2 independent witnesses** from locality during search.
- Officers & witnesses must **offer for their personal search** before & after search proceedings.
- **Preparation of Panchnama/Mahazar** detailing goods/documents seized/detained, signed by all involved.
- Search **warrant returned** to issuing authority with outcome report.
- Issuing authority maintains a **register** for search warrants.
- **Copy of Panchnama/Mahazar** along with its annexure are given to person incharge/owner.

Search Warrant & its contents: Written authority to conduct a search is called search warrant issued by an officer of rank of **Joint Commissioner or above**. A search warrant must indicate existence of a reasonable belief leading to search. Search Warrant should contain following details:

- **violation** under the Act,
- **premise** to be searched,
- name & designation of **person authorized for search**,
- name of **issuing officer** with full designation along with his round seal,
- **date & place** of issue,
- **serial number** of search warrant,
- **period of validity** i.e. a day or 2 days etc.

Safeguards for Search or Seizure:

- Seized goods/documents must **not be retained beyond necessary pd.** for examination.
- **Photocopies** of seized documents can be taken by person from whose custody they were seized.
- Seized goods must be returned if no notice is issued within **6 months (+ 6 months for suff. cause)**.
- Perishable/hazardous goods can be **disposed of immediately** after seizure with an inventory prepared.
- Search & seizure follow Code of Criminal Procedure 1973 (Cr.P.C.), except records are sent to Principal Commissioner/Commissioner instead of a Magistrate.

Confiscation of Goods [Sec. 130]: Goods become liable to confiscation when any person does following:

- supplies/receives any goods in contravention** of any of provisions of GST Act/Rules with an intent to evade payment of tax;
- does **not account for** any goods on which he is liable to pay tax under this Act;
- supplies** any goods liable to tax under GST Act **without applying for registration**;
- contravenes** any of GST Act/Rules' provisions with an intent to **evade tax payment**;
- uses any **conveyance** as a means of transport for carriage of goods **in contravention** of GST Act/Rules' provisions unless owner of conveyance proves that it was so used without knowledge/connivance of owner himself/his agent/person in charge of conveyance.

Inspection of Goods in Movement [Sec. 68]: Inspection can also be carried out of a conveyance, carrying a consignment of value **exceeding specified limit**. Person-in-charge of conveyance has to produce prescribed docs./devices for verification & allow inspection. Eway Bill has been prescribed for said purpose. Inspection during transit can be carried out **even without authorization of Joint Commissioner**.

Power to Arrest [Sec. 69]: Term 'arrest' has not been defined in GST law. However, as per judicial pronouncements, it denotes **taking into custody** of a person **under some lawful command/authority**. Person is said to be arrested when he is **taken & restrained of his liberty** by **power/lawful warrant**.

Arrests under GST apply to **specified offences with tax evasion > ₹2 crore**. Authorization from **Commissioner** is mandatory for arrest. Repeated offenders can be arrested irrespective of monetary limit.

Safeguards for Arrested Persons

- For **cognizable** offences, grounds of arrest must be provided in writing, & person must be presented before a magistrate **within 24 hours** of arrest.
- For non-cognizable & bailable offences, AC/DC can **release person** on bail as per Cr.P.C.
- Arrest procedures must comply with **Code of Criminal Procedure, 1973**.

Types of Offences

- **Cognizable Offence**: Serious offences allowing **arrest without a warrant** & to start an investigation with or without permission of a court (e.g., **tax evasion > ₹5 crore**).
- **Non-Cognizable Offence**: **Less serious offences** requiring a **warrant for arrest** & an investigation cannot be initiated without a court order.

Cognizable vs. Non-Cognizable Offences in CGST Act

- Tax evasion/ITC fraud/refund misuse > ₹5 crore: **Cognizable & non-bailable** (bail granted by Judicial Magistrate).
- Other offences: **Non-cognizable and bailable** (bail granted by AC/DC).

Precautions for Arrest: Adherence to **Cr.P.C. provisions**, including presenting person arrested without warrant to Magistrate within 24 hrs (excluding journey time from place of arrest to Magistrate's court).

Guidelines for Arrest: Arrest should be made on a case-to-case basis, considering nature & gravity of offence & assess quantum of duty evaded/wrongful ITC availed & evaluate evidence quality to:

- Ensure proper investigation of offence.
- Prevent accused from absconding.
- Target masterminds/key operators behind benami imports/exports.
- Arrest if intent to evade duty and guilty mind (mens rea) are evident.
- Address large-scale tax evasion cases.
- Prevent tampering with evidence
- Intimidating/ influencing witnesses

Power to Summon persons to give evidence and produce documents [Sec. 70]: PO may summon any person during an enquiry under GST Act.

- **Duties of the Summoned Person**:
 - Must **appear before officer** in person or through an authorized representative.
 - Must **provide truthful evidence/statements** on oath.
 - Must **produce specific documents** requested, not entire books of accounts.
- Asking for 'evidence' or requiring 'to produce a document' does not permit calling entire set of BOA; but to **call for specific evidence/docs**.
- Recording statement on oath is not conclusion of investigation but to further the investigation, gather evidence, or support charges against a person.
- Statements may be **modified/withdrawn (within a reasonable timeframe)**.
- Statements are **inherently unreliable** unless validated u/s 136.
- Docs. not otherwise available may be summoned & collected like contracts & other docs. Annual A/cs which are anyway **available on MCA website** should **not be called for** in summons proceedings.
- **Consequences of non-appearance to summons**:
 - **Prosecution** under following sections of Indian Penal Code (IPC)
 - Section 174, IPC: Prosecution for failure to appear.
 - Section 172, IPC: Prosecution for absconding.
 - Section 175, IPC: Prosecution for non-production of documents.
 - Section 193, IPC: Prosecution for giving false evidence.
 - **Penalty** under GST Law: Liable to a penalty up to **₹25,000** u/s 122(3)(d) of CGST Act.

• **Guidelines for Issuance of Summons:**

- Summons should be issued as a **last resort** when assesses are not cooperating.
- This section should **not** be used to summon **top management**.
- Language of summons should **not be harsh**, avoiding unnecessary mental stress and embarrassment.
- Summons issued by Superintendent must be **preceded by prior written permission** from AC or above
- If prior written permission is not possible, **oral/telephonic permission** should be obtained, documented, & intimated promptly.
- A **report or brief of proceedings** must be recorded & submitted to officer who authorized summons.
- Senior Mgt.(CEO/CFO/GM) of large Cos./ PSUs should not generally be issued summons at **first instance** & should only be summoned when their involvement in revenue loss is indicated during investigation

[Amendment from Nov'25: Sec. 70(1A) inserted which says that all persons summoned u/s 70(1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, & person so appearing shall state truth during examination or make statements or produce such documents and other things as may be required.]

Precautions to be Observed while Issuing Summons:

- (i) A summons should not be issued for appearance where it is **not justified**. Power to summon can be exercised only when there is an inquiry being undertaken & **attendance** of person is **necessary**.
- (ii) Normally, summons should **not be issued repeatedly**. As far as practicable, **statement** of accused or witness should be recorded in **minimum number of appearances**.
- (iii) **Time** of appearance should be **respected** & no person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.
- (iv) Preferably, statements should be **recorded during office hours**; however, an exception could be made regarding time & place of recording statement having regard to facts in case.

Access to Business Premises [Sec. 71]:

- An officer **authorized by Joint Commissioner or higher-ranking officers** can access business premises for carrying out audit, scrutiny, verification, & checks to safeguard interest of revenue.
- Officers may **inspect BOA, docs., computers, programs, software**, or other things as may be required
- It is duty of Persons-in-Charge to furnish required documents **within 15 working days** of the demand.
- Persons in charge of business premises are also duty **bound to furnish documents** to audit parties deputed by PO or CA/CMA deputed u/s 66 for special audits.
- Following records are covered:
 - **Records** prepared/maintained by regd. person as declared to PO.
 - **Trial balance** or equivalent.
 - Statement of **annual financial accounts**, duly audited.
 - **Cost audit report**, if any.
 - **Income-tax audit report**, if any.
 - Any **other** relevant record.
- **Key Point:** Sec. 71 is more **general** & gives access to regd. person's POB to inspect BOA, documents etc. for carrying out any audit, scrutiny, verification and checks, whereas Sec. 67 is applicable in specific instances & applies to specific persons/places where there is an **intent to evade taxes**.

Officers to Assist Proper Officers [Sec. 72]: Following officers have been empowered & are required to assist CGST officers in execution of CGST Act:

- i. **Police;**
- ii. **Railways**
- iii. **Customs;**
- iv. Officers of State/UT/ Central Govt. engaged in collection of **GST**;
- v. Officers of State/UT/ Central Govt. engaged in collection of **land revenue**;
- vi. All **village officers**;
- vii. Any **other** class of officers as may be notified by CG/SG