



Chapter 17 - Inspection, Search, Seizure and Arrest

Part A - ICAI TYK

- 1) Explain the situation in which access to business premises is allowed under section 71. Also, list the records which are to be produced during access to business premises.

Sol: The access to any place of business of a registered person is allowed to a proper officer who authorized by an officer of the rank of Joint Commissioner or higher for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons in charge of such premises to furnish the required documents within fifteen working days from the day when such demand is made. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit. The following records are covered by this provision and are to be produced, if called for.

- (i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.
- (ii) trial balance or its equivalent.
- (iii) statements of annual financial accounts, duly audited.
- (iv) cost audit report, if any.
- (v) the income-tax audit report, if any.
- (vi) any other relevant record.

- 2) Explain the safeguards provided under section 69 to a person who is placed under arrest.

Sol: Section 69 provides following safeguards to a person who is placed under arrest:

- (a) If a person is arrested for a cognizable offence, he must be informed of the grounds of arrest and be produced before a magistrate within 24 hours.
- (b) If a person is arrested for a non-cognizable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.
- (c) All arrest must be in accordance with the provisions of the Code of Criminal Procedure relating to arrest in terms of section 69(3).

- 3) Who can order for carrying out 'inspection' and under what circumstances?

Sol. As per section 67, an inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following to evade tax:

- i. suppressed any transaction of supply;
- ii. suppressed stock of goods in hand;

- iii. claimed excess input tax credit;
- iv. contravened any provision of the CGST Act to evade tax;
- v. a transporter or an owner/operator of a warehouse/godown/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.

4) Who can order for search and seizure under the provisions of the CGST Act?

Sol. An officer of rank of Joint Commissioner or above can authorize an officer in writing to carry out search & seize goods, documents, books or things. Such authorization can be given only where Joint Commissioner/an officer above his rank has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place. Joint Commissioner/an officer above his rank empowered to authorize any officer to carry out search & seizure can himself also carry out search & seize such goods, documents or books or things.

5) Describe the powers that can be exercised by an officer during a valid search.

Sol. 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 CGST 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 premises if access to it denied. In case where it is not practicable to seize any such goods, the officer can issue an order restricting owner of the goods to not remove / part / deal with the goods except with his prior permission. The officer can also dispose of goods seized which are specified by Government in a notification having regard to nature of such goods.

6) Discuss the responsibilities of the person to whom summons has been issued.

Sol. A person who is issued summons 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 summons upon any matter which is the subject matter of examination and to produce such documents and other things as may be required.

7) Explain the meaning of 'arrest'.

Sol. The term 'arrest' has not been defined in the CGST 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 a lawful warrant.

8) State circumstances when proper officer can authorize 'arrest' of any person under the CGST Act.

Sol. The Commissioner can authorize an officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or section 132(2) and the tax evaded / input tax credit wrongly availed or utilized or refund wrongly taken exceeds Rs. 2 crore. This essentially means that a person can be arrested only where

the tax evasion is more than Rs. 2 crore and the offences are specified offences namely, making supply without any invoice; issue of invoice without any supply; amount collected as tax but not paid to the Government beyond a period of 3 months and taking input tax credit without receiving goods and services. However, the monetary limit shall not be applicable if the offences are committed again (even after being convicted earlier), i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

Part B - PYQs/RTPs/MTPs

9) List safeguards provided in Sec. 67 of CGST Act in respect of power of search or seizure. [PYQ]

Sol. The safeguards provided in section 67 of the CGST Act, 2017 in respect of the power of search or seizure are as under:

- (i) Seized documents/goods/things should not be retained beyond the period necessary for their examination.
- (ii) Photocopies/extracts of the documents can be taken by the person from whose custody documents are seized.
- (iii) In case of seized goods, where a notice is not issued within 6 months [extendible for further 6 months] of their seizure, goods shall be returned to person from whose possession they were seized.
- (iv) An inventory of seized goods is required to be made by the seizing officer.
- (v) Certain specified categories of goods such as perishable, hazardous, etc., can be disposed of immediately after seizure.
- (vi) Searches and seizures shall be carried out in accordance with the provisions of the Code of Criminal Procedure. Instead of sending copies of any record made in the course of the search to the nearest magistrate, it has to be sent to the Principal Commissioner / Commissioner of CGST.

10) Discuss the precautions to be observed while issuing summons under GST law. [RTP Nov'23]

Sol. The following precautions should generally be observed when summoning a person under GST law:

- (i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.
- (ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in a minimum number of appearances.
- (iii) Respect the time of appearance given in the summons. 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 and place of recording statement, having regard to the facts in the case.

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