

Inspection, Search, Seizure and Arrest

The provisions for Inspection, Search, Seizure and Arrest are provided to protect the interest of genuine tax payers and as a deterrent for tax evasion. These provisions are also required to safeguard Government's legitimate dues.

Chapter XIV- Inspection, Search, Seizure and Arrest (Section 67 to 72) of the CGST Act deals with the provisions relating to Inspection, Search, Seizure and Arrest. State GST laws also prescribe identical provisions in relation to these. Provisions of Inspection, Search, Seizure and Arrest under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

1. Inspection under GST

'Inspection' is a new provision under the Act. 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.

❖ Circumstances for carrying out Inspection

As per **section 67 (1)** of CGST Act, the Proper Officer, not below the rank of Joint Commissioner can authorize in writing any other officer of central tax to inspect if he has reasons to believe that –

- a) A taxable person has
 - i. suppressed any transaction relating to supply of goods or services or both;
 - ii. suppressed the stock of goods in hand;
 - iii. claimed input tax credit in excess of his entitlement under this Act
 - iv. indulged in contravention of any of the provisions of this Act to evade tax.
- b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act.

❖ Reason to believe

‘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.

❖ Inspection of goods in movement (section 68)

Inspection can also be done of the conveyance, carrying a consignment of value exceeding specified limit. The person in charge of the conveyance has to produce prescribed documents/devices for verification and allow inspection. E-way Bill has been prescribed for the said purpose.

2. Search and Seizure under GST

‘**Search**’ involves an attempt to find something. Search, in tax/legal parlance, is an action of a government official (a tax officer or a police officer, depending on the case) to go and look through or examine carefully a place, person, object etc. in order to find something concealed or to discover evidence of a crime. The search can only be done under the proper and valid authority of law.

‘**seizure**’ has not been specifically defined in GST. In legal parlance, seizure is the act of taking over something or someone by force through legal process, such as the seizure of evidence found at the scene of a crime. It generally implies taking possession forcibly against the wishes of the owner.

❖ Who can order for Search and Seizure under the Act and when?

As per **section 67 (2)** of CGST Act, Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under section 67(1) or otherwise, 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 in any place, he may authorize in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things. Seized documents or books or things shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

If it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

The person from whose custody any documents are seized under section 67(2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorized officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation [section 67 (5)].

❖ **Confiscation of Goods**

As per section 130 of the CGST Act, any person—

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax;
- (ii) does not account for any goods on which he is liable to pay tax under this Act;
- (iii) supplies any goods liable to tax under this Act without having applied for registration;
- (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax;
- (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance.

Then, all such goods or conveyances shall be liable to **confiscation**

❖ **Powers of the officer authorized to search**

An officer carrying out a search has the power to search for and seize goods and documents/books/things from the premises searched. During search, The officer authorized shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied [section 67(4)].

❖ **Safeguards provided for in respect of Search or Seizure**

- i. The documents, books or things or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice [section 67 (3)].
- ii. If notice is not issued within six months (extendable by 6 more months on sufficient cause being shown) of the seizing the goods, they will be returned [section 67 (7)].
- iii. The Government can issue a list of hazardous or perishable goods which can be disposed of by the proper officer in such manner as may be prescribed as soon as they are seized [section 67 (8)].
- iv. Those goods specified under section 67 8), have been seized by a proper officer, or any officer authorized by him, he shall prepare an inventory of such goods in such manner as may be prescribed [section 67(9)].
- v. The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall apply. However, one important modification is in relation to sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” was substituted [section 67(10)].
- vi. The proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution [section 67(11)].

3. Arrest under GST

The term 'Arrest' has not been defined in GST. 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 color of lawful warrant.

As per **section 69 (1)**, If the Commissioner has reasons to believe that a person has committed an offence u/s 132, he may, by order, authorize any officer of central tax to arrest such person.

The arrested person will be informed about the grounds of his arrest. He will appear before the magistrate within 24 hours in case of cognizable offence [section 69(2)].

❖ Offences u/s 132 where the arrest provisions become applicable

Offences where arrest provisions become applicable when any person-

- i. supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax [section 132 (1) (a)];
- ii. issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax [section 132 (1) (b)];
- iii. avails input tax credit using such invoice or bill referred to in clause (b) of section 132 (1);
- iv. collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due [section 132 (1) (d)];
- v. convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine [section 132 (2)].

where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine [section 132 (1) (i)]

❖ **cognizable and a non-cognizable offence**

- As per section 132(5), The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of section 132 (1) and punishable under clause (i) of section 132 (1) shall be **cognizable and non-bailable**.
- As per section 132 (4), Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in section 132(5) shall be **non-cognizable and bailable**.

❖ **Power to summon persons for evidence (Section 70)**

The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to 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.

❖ **Access to business premises (section 71)**

Any officer under this Act, authorized by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

❖ **Officers to assist proper officers (Section 72)**

- i. All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.
- ii. The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

