

Inspection, Search, Seizure and Arrest

Q 1. What is the meaning of the term "Search"?

Ans. As per law dictionary and as noted in different judicial pronouncements, 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.

Q 2. What is the meaning of the term "Inspection"?

Ans. 'Inspection' is a new provision under the CGST/SGST 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.

Q 3. Who can order for carrying out "Inspection" and under what circumstances?

Ans. As per Section 67 of CGST/SGST Act, 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:

i. suppressed any transaction of supply;

ii. suppressed stock of goods in hand;

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iii.claimed excess input tax credit;

iv.contravened any provision of the CGST/SGST Act to evade tax;

v.a transporter or 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.

Q 4. Can the proper officer authorize Inspection of any assets/premises of any person under this Section?

Ans. No. Authorization can be given to an officer of CGST/ SGST to carry out inspection of any of the following:

i.any place of business of a taxable person;

ii.any place of business of a person engaged in the business of transporting goods whether or not he is a registered taxable person;

iii.any place of business of an owner or an operator of a warehouse or godown.

Q 5. Who can order for Search and Seizure under the provisions of CGST Act?

Ans. An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner 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.

Q 6. What is meant by 'reasons to believe'?

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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.

Q 7. 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, he has to disclose the material on which his belief was formed. 'Reason to believe' need not be recorded invariably in each case. However, it would be better if the materials / information etc. are recorded before issue of search warrant or before conducting search.

Q 8. What is a Search Warrant and what are its contents?

Ans. The written authority to conduct search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the following details:

i.the violation under the Act,

ii.the premise to be searched,

iii.the name and designation of the person authorized for search,

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iv.the name of the issuing officer with full designation along with his round seal,

v.date and place of issue,

vi.serial number of the search warrant,

vii.period of validity i.e. a day or two days etc.

Q 9. When do goods become liable to confiscation under the provisions of CGST/SGST Act?

Ans. As per section 130 of SGST/SGST Act, goods become liable to confiscation when any person does the following:

(i)supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion 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 the registration;

(iv)contravenes any of the provisions of the CGST/ SGST Act or rules made thereunder with intent to evade payment of tax.

Q 10. What powers can be exercised by an officer during valid 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 CGST/SGST 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.

Q 11. What is the procedure for conducting search?

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

Q 12. What are the basic requirements to be observed during Search operations?

Ans. The following principles should be observed during Search:

- No search of premises should be carried out without a valid search warrant issued by the proper officer.
- There should invariably be a lady officer accompanying the search team to residence.
- The officers before starting the search should disclose their identity by showing their identity cards to the person in-charge of the premises.

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- The search warrant should be executed before the start of the search by showing the same to the person in-charge of the premises and his signature should be taken on the body of the search warrant in token of having seen the same. The signatures of at least two witnesses should also be taken on the body of the search warrant.
- The search should be made in the presence of at least two independent witnesses of the locality. If no such inhabitants are available/willing, the inhabitants of any other locality should be asked to be witness to the search. The witnesses should be briefed about the purpose of the search.
- Before the start of the search proceedings, the team of officers conducting the search and the accompanying witnesses should offer themselves for their personal search to the person in-charge of the premises being searched. Similarly, after the completion of search all the officers and the witnesses should again offer themselves for their personal search.
- A Panchnama / Mahazar of the proceedings of the search should necessarily be prepared on the spot. A list of all goods, documents recovered and seized/detained should be prepared and annexed to the Panchnama/Mahazar. The Panchnama / Mahazar and the list of goods/ documents seized/detained should invariably be signed by the witnesses, the in-charge/ owner of the premises before whom the search is conducted and also by the officer(s) duly authorized for conducting the search.
- After the search is over, the search warrant duly executed should be returned in original to the issuing officer with a report regarding the outcome of the search. The names of the officers who participated in the search may also be written on the reverse of the search warrant.
- The issuing authority of search warrant should maintain register of records of search warrant issued and returned and used search warrants should be kept in records.
- A copy of the Panchnama / Mahazar along with its annexure should be given to the person in-charge/owner of the premises being searched under acknowledgement.

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Q 13. Can a CGST/SGST officer access business premises under any other circumstances?

Ans. Yes. Access can also be obtained in terms of Section 65 of CGST/SGST Act. This provision of law is meant to allow an audit party of CGST/SGST or C&AG or a cost accountant or chartered accountant nominated under section 66 of CGST/SGST Act, 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 an officer of the rank of Commissioner of CGST or SGST. This provision facilitates access to a business premise which is not registered by a taxable person as a principal or additional place of business but has books of accounts, documents, computers etc. which are required for audit or verification of accounts of a taxable person.

Q 14. What is meant by the term 'Seizure'?

Ans. The term 'seizure' has not been specifically defined in the Model GST Law. 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.

Q 15. Does GST Act(s) have any power of detention of goods and conveyances?

Ans. Yes, under Section 129 of CGST/SGST Act, an officer has power to detain goods along with the conveyance (like a truck or other types of vehicle) transporting the goods. This can be done for such goods which are being transported or are stored in transit in violation of the provisions of CGST/SGST Act. Goods which are stored or are kept in stock but not accounted for can also be detained. Such goods and conveyance shall be released after payment of applicable tax or upon furnishing security of equivalent amount.

Q 16. What is the distinction in law between 'Seizure' and 'Detention'?

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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.

Q 17. What are the safeguards provided in GST Act(s) in respect of Search or Seizure?

Ans. Certain safeguards are provided in section 67 of CGST/SGST Act in respect of the power of search or seizure.

These are as follows:

i. Seized goods or documents should not be retained beyond the period necessary for their examination;

ii. Photocopies of the documents can be taken by the person from whose custody documents are seized;

iii. For seized goods, if a notice is not issued within six months of its seizure, 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 of maximum six months;

iv. An inventory of seized goods shall be made by the seizing officer;

v. Certain categories of goods to be specified under CGST Rules (such as perishable, hazardous etc.) can be disposed of immediately after seizure;

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vi. Provisions of 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 Code of Criminal Procedure – instead of sending

copies of any record made in course of search to the nearest Magistrate empowered to take cognizance of the offence, it has to be sent to the Principal Commissioner/ Commissioner of CGST/ Commissioner of SGST.

Q 18. Is there any special document required to be carried during transport of taxable goods?

Ans. Under section 68 of CGST /SGST Act, a person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount may be required to carry a prescribed document as may be prescribed.

Q 19. 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.

Q 20. When can the proper officer authorize ‘arrest’ of any person under CGST / SGST Act?

Ans. The Commissioner of CGST/SGST can authorize a CGST/SGST 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 Sec 132(2) of the CGST/SGST Act. This essentially means that a person can be arrested only where the tax evasion is more than 2 crore rupees or where a he has been convicted earlier under CGST Act.

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Q 21. What are the safeguards provided under CGST /SGST Act for a person who is placed under arrest?

Ans. There are certain safeguards provided under section 69 for a person who is placed under arrest. These are:

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;

i. If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner of CGST/SGST 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;

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

Q 22. What are the precautions to be taken during arrest?

Ans. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrest and the procedure thereof must be adhered to. It is therefore necessary that all field officers of CGST/SGST be fully familiar with the provisions of the Code of Criminal Procedure, 1973.

One important provision to be taken note of is section 57 of Cr.P.C., 1973 which provides that a person arrested without warrant shall not be detained for a longer period than, under the circumstances of the case, is reasonable but this shall not exceed twenty four hours (excluding the journey time from place of arrest to the Magistrate's court). Within this period, as provided under section 56 of Cr.P.C., the person making the arrest shall send the person arrested without warrant before a Magistrate having jurisdiction in the case.

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In a landmark judgment in the case of D.K. Basu v. State of West Bengal reported in 1997 (1) SCC 416, the Hon'ble Supreme Court has laid down specific guidelines required to be followed while making arrests. While this is in relation to police, it needs to be followed by all departments having power of arrest. These are as under:

i. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

ii. The police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

iii. A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

iv. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid

Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

v. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

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vi. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The

'Inspection Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

vii. The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

viii. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

ix. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

x. A police control room should be provided at all district and State headquarters where information regarding the arrest and the place

of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

Q 23. What are the broad guidelines for an arrest followed in CBEC?

Ans. Decision to arrest needs to be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty evaded or credit wrongfully availed, nature and quality of evidence, possibility of evidences being

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tampered with or witnesses being influenced, cooperation with the investigation, etc. Power to arrest has to be exercised after careful consideration of the facts of the case which may include:

i.to ensure proper investigation of the offence;

ii.to prevent such person from absconding;

iii.cases involving organized smuggling of goods or evasion of customs duty by way of concealment;

iv.master minds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc.;

v.where the intent to evade duty is evident and element of mensrea/guilty mind is palpable;

vi.prevention of the possibility of tampering with evidence;

vii.intimidating or influencing witnesses; and

viii.large amounts of evasion of duty or service tax at least exceeding one crore rupees.

Q 24. What is a cognizable offence?

Ans. Generally, as per Cr. PC, 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. However, GST being a special legislation, only the officers, duly empowered under the Act can act as above.

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Q 25. 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 a court order, except as may be authorized under special legislation.

Q 26. What are cognizable and non-cognizable offences under CGST Act?

Ans. In section 132 of CGST Act, it is provided that the offences relating to taxable goods and /or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken exceeds Rs. 5 crore, shall be cognizable and non-bailable. Other offences under the act are non-cognizable and bailable.

Q 27. When can the proper officer issue summons under CGST Act?

Ans. Section 70 of CGST/SGST Act gives powers to a duly authorized CGST/SGST officer to call upon a person by issuing a summon to present himself before the officer issuing the summon to either give evidence or produce a document or any other thing in any inquiry which an officer is making. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

Q 28. 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.

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Q 29. What can be the consequences of non-appearance to summons?

Ans. The proceeding before the official who has issued summons is deemed to be a judicial proceeding. 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. In addition, if a person does not appear before a CGST/ SGST officer who has issued the summon, he is liable to a penalty up to Rs 25,000/- under section 122(3)(d) of CGST/SGST Act.

Q 30. What are the guidelines for issue of summons?

Ans. The Central Board of Excise and Customs (CBEC) in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

i. summons are to be issued as a last resort where assesses are not co-operating and this section should not be used for the top management;

ii. the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;

iii. summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;

iv. where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the

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same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;

v.in all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;

vi.senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.

Q 31. What are the precautions to be observed while issuing summons?

Ans. The following precautions should generally be observed when summoning a person: -

(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 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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Q 32. Are there any class of officers who are required to assist CGST/SGST officers?

Ans. Under section 72 of CGST/SGST Act, the following officers have been empowered and are required to assist CGST/SGST officers in the execution of CGST/SGST Act. The categories specified are as follows:

i. Police;

ii. Railways

iii. Customs;

iv. Officers of State/UT/ Central Government engaged in collection of GST;

v. Officers of State/UT/ Central Government engaged in collection of land revenue;

vi. All village officers;

vii. Any other class of officers as may be notified by the Central/State Government.