

**Chapter – XIV**  
**Inspection, Search,**  
**Seizure and arrest.**  
**Summons, Section 73, 74 etc**

**By**

**N.R. BADHEKA, Adv & Notary-Mumbai**

**For**

**Workshop for GSTPAM**

**12-03-2019**

Relevant Provisions

Power of Inspection, Search and Seizure (section 67)

Inspection of goods in movement (section 68)

Power to arrest (section 69)

Cognizable and non-cognizable offence

Relevant Provisions

Safeguards and basic requirements during search, Safeguards in relation to arrest

Power to summon (section 70)

CBEC guidelines on issuing summons

Access to business premises (section 71)

Officers required to assist CGST/SGST officers (section 72)

Relevant Rules

Rule 132 –Power to summon persons to give evidence and produce documents.-Anti profiteering agency

Rule 139(1)-Authorization under sec 67 –GST INS -01

139(2) –Order of seizure –GST INS 2

Relevant Rules

Rule 139(4) –Order of Prohibition to Custodian –GST INS -03

Rule 140-Bond and security for release of seized goods.-GST INS -04

Rule 141-Procedure in respect of seized goods –release of perishable goods –GSTINS-05

Power of Inspection, Search and Seizure (Contd.)

## **SAFEGUARDS:**

Certain safeguards are provided in respect of power of search and seizure. These are:

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

Provisional release of seized goods upon execution of Bond and furnishing of sufficient security or on payment of applicable tax, interest and penalty

Power of Inspection, Search and Seizure (Contd.)

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

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- Period of **six months** can be extended on justified grounds up to a maximum period of **six months** by a proper officer i.e. Principal Commissioner /Commissioner.

Power of Inspection, Search and Seizure (Contd.)

\_\_\_\_\_ An inventory of seized goods shall be made by the seizing officer;

Certain categories of goods to be specified by Notification(such as **perishable, hazardous nature goods** etc.) can be disposed of immediately after seizure;-Noti 27 of 2018 dt 13-06-2018

Provisions of Code of Criminal Procedure 1973 (2 of 1974) relating to search and seizure shall apply- one important modification relates 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 Commissioner of CGST/ Commissioner of SGST .

**[Section 67(10)]**

*(Cont)*

Power of Inspection, Search and Seizure (Contd.)

To check the tax invoices/bill of supply, the Commissioner can authorize to purchase any goods/services from the business premises of taxable person .sec 67(12), and

Taxable person to refund the amount and cancel the tax invoice/ bills of supply on return of goods.

Power of Inspection, Search and Seizure (Contd.)

## **GUIDELINES:**

**Certain basic guidelines to be observed during search: earlier circulars, guidelines to apply ,subject to specific provisions under GST**

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 a residence.

The officers before starting the search should disclose their identity by showing their identity cards to the person in-charge of the premises.

Circular by Commissioner of sale tax –Principle of natural justice to follow.

(Cont)

Power of Inspection, Search and Seizure (Contd.)

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.

Power of Inspection, Search and Seizure (Contd.)

Certain **basic guidelines to be observed** during search:

Both before the start of the search, and after its completion, 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.

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.

Power of Inspection, Search and Seizure (Contd.)

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**.

Power of Inspection, Search and Seizure (Contd.)

The issuing authority of search warrant should **maintain register** of records of search warrant issued and the 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.

## **Section 68**

### **Inspection of goods in movement**

The Central or a State Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount to carry with him **such documents** as may be prescribed and also to carry with him **such devices** in such manner as may be prescribed in this behalf.

E way bill provisions

Where any such conveyance) is intercepted by a proper officer (**Inspector**) at any place, he may require the person in charge of the said conveyance to produce the aforesaid documents and devices for verification, and the said person shall be liable to produce the documents and devices and also allow inspection of goods.

**Central Government vide Notification no.27/2017 Central Tax dt. 30.08.2017 under Rule 138 of the CGST Rules, 2017 has made E-way Bill Provisions:**

Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees

In relation to supply; or

For reasons other than supply;

- sales returns; stock transfer; movement for job work etc. Or;

- due to inward supply from unregistered person

shall, before commencement of movement, furnish information relating to the said goods in Part A of FORM GST EWB-01, electronically, on the common portal.

**Inspection of goods in movement**

(Contd)

E-Way bill is optional when value of consignment is less than Rs. 50,000/-

Validity of E-Way bill is upto 100 km – one day

For every additional 100 km or part- one additional day

**Documents to be carried with E-Way Bill:**

Invoice or bill of supply or delivery challan, as the case may be

Or Invoice reference number generated on portal

A copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance in such manner as may be notified by the Commissioner

..... (Cont)

**Section 69**

**Power to Arrest**

The Commissioner of CGST/SGST can authorise a CGST/SGST officer to arrest a person if he has reasons to believe that the person has committed an offence prescribed in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section.

**Section 69**

**Power to Arrest (Contd)**

**OFFENCES WHERE ARREST ALLOWED -sec 132 (1) and 132(5)**

(a) 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;

(b) 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 utilisation of input tax credit or refund of tax.

Section 69

Power to Arrest (Contd)

#### **OFFENCES WHERE ARREST ALLOWED-132(1)**

(c) **avails input tax** credit using such invoice or bill referred to in clause (b);

(d) 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 69 r/w 132(1),(4) &(5) –Non cognizable -,Bailable.

#### **OFFENCES WHERE ARREST NOT ALLOWED -**

(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

Section 69 r/w 132(1),(4) &(5) –Non cognizable -,Bailable

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

Arrest Not permitted

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) **tampers** with or destroys any material evidence or documents;

Arrest Not permitted

#### **OFFENCES WHERE ARREST NOT ALLOWED (Cont.)**

(k) **fails to supply any information** which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

**[Section 132 (1)(e) to (l)] \_\_\_\_\_**

## Section 69

### Power to Arrest (Contd)

#### Punishment prescribed under Section 132(1)

### Power to Arrest (Contd)

#### REPEAT OFFENCES

132(2) Where any person convicted of an offence under this section is again convicted of an offence, 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.

132(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

Sec 132(4) and (5)

**Cognizable offence: Section 132 (5)** All offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section where the amount of tax evaded exceeds Rs. 5 crores, shall be cognizable and non-bailable

**Non-cognizable offence: Section 132(4)** Other offences under the Act, except the offences referred to in Section 132(5) are non-cognizable and bailable

#### Power to Arrest Contd

Where a person is arrested for a non-cognizable and bailable offence, the officer carrying out the arrest can grant him bail in accordance with Section 436 of the Code of Criminal Procedure, 1973

Where a person is arrested for a cognizable offence, he has to be produced within 24 hours of his arrest before a judicial Magistrate who will take a decision regarding releasing him on bail

---

#### Power to Arrest (CrPC )

As per Cr.P.C., for cognizable offence, the police officer has the authority to make an arrest without a warrant, whereas for non-cognizable offence, a police officer cannot make an arrest without a warrant

In GST under Section 69, arrest can be made both for cognizable and non-cognizable offence upon an authorisation by the Commissioner of CGST/SGST

#### SAFEGUARDS -Arrest

Certain safeguards provided under section 69(3) for a person who is placed under arrest:

If a person is arrested for a cognizable offence, he must be informed of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest;

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;

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

#### **SAFEGUARDS -Arrest**

Power to arrest has to be exercised after careful consideration of the facts of the case. This may include:

to ensure proper investigation of the offence;

to prevent such person from absconding;

master minds or key operators effecting proxy/benami transactions in the name of dummy or non-existent persons/Importer Exporter Code (IECs), etc;

where the intent to evade duty is evident and element of

*mens rea* /guilty mind is palpable;

prevention of the possibility of tampering with evidence;

intimidating or influencing witnesses and;

large amounts of evasion of tax.

#### Apex Court Guidelines

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:

Officer 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 officials who handle interrogation of the arrestee must be recorded in a register.

The officer carrying out the arrest shall prepare a memo of arrest at the time of arrest

Such memo shall be attested by **at least one witness**- either a member **of the family** of the arrestee or a respectable person of the locality **from where** the arrest made.

#### Apex Court Guidelines

Arrest memo be counter signed by the arrestee and must contain the time and date of arrest.

A person who has been arrested or detained 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.

This is not required if the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

#### Apex Court Guidelines

The time, place of arrest and venue of custody of an arrestee must be notified by the arresting officer where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area **concerned telegraphically** within a period of **8 to 12 hours** after the arrest.

An entry must be made in the diary at the place of detention regarding the arrest of the person

Guidelines for arrest

Entry must 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.

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

Guidelines for arrest

The arrestee should be subjected to medical examination by a 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.

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

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

Follow CBEC guidelines –Tax Guru serch for guidelines for search, seizure, summons etc –about 39 pages ,

Section 70

Power to summon persons to give evidence and produce documents

CGST/SGST officer (Superintendent) are authorized to summon a person to present himself before the officer issuing the summon to:

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

Power to summon persons to give evidence and produce documents (contd...)

A person who is issued a summon is legally bound to attend either in person or by an authorized representative, as such officer may direct



It is to be noted that officer has the discretion to summon a person himself or to allow him to be represented by an authorised representative

The exemptions under section 132 and 133 of Code of Civil Procedure, 1908 (CPC) applies to requisitions for attendance under the CGST/SGST Act

**Power to summon persons to give evidence and produce documents (contd...)**

-

Section 132 of CPC provides that the women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court

Section 133 of CPC provides entitlement to exemption from personal appearance in Court to some dignitaries, such as the President of India, the Vice President of India and some other high dignitaries of the State/ Government

All these exemptions will apply in respect of summons issued under the CGST/SGST Act

**Power to summon persons to give evidence and produce documents (contd...)**

A person summoned is bound to state the truth before the officer who has issued the summon upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required.

This proceeding will be deemed to be a “judicial proceeding” as understood under section 193 and section 228 of the Indian Penal Code, 1860 (IPC)

**Power to summon persons to give evidence and produce documents (contd...)**

Section 193 of IPC contains penal provision for

giving false evidence under summons

Section 228 of IPC contains penal provisions for intentionally insulting or interrupting the Officer sitting in summons proceedings.

These provisions of IPC can be invoked where the person summoned under CGST/SGST Act gives false evidence or interrupts the proceedings under summons.

**Power to summon persons to give evidence and produce documents (contd...)**

Sections 172, 174 and 175 of IPC, 1860 are also relevant in respect of summon provisions

They contain penal provisions in case of person:

Absconding to avoid service of summons or other proceeding-

**Section 172**

Non-attendance in obedience to an order from public servant-

**Section 174**

Omission to produce document or electronic record to public

servant by person legally bound to produce it – Section 175

Power to summon enables an officer to call a suspect or witness to give evidence or produce documents

It is an important step in investigation which helps to convert the findings into admissible evidence

### **Power to summon persons to give evidence and produce documents (contd...)**

CBEC has issued guidelines to ensure that summons provisions are not misused in the field. Some important highlights are :

summons be issued as a last resort where assesses are not co-operating;

this section should not be used for the top management;

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

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;

### **Power to summon persons to give evidence and produce documents (contd...)**

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

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

### **Power to summon persons to give evidence and produce documents (contd...)**

Senior management such as CEO, CFO, General Managers of a large company or a PSU 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.

## **Section 71**

### **Access to business premises**

This provision allows an audit party 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

Access is for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue

A written authorization is still to be issued by an officer not below the rank of **Joint 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

Access to business premises

Upon demand by the proper officer or audit party or cost accountant or chartered accountant so authorised, the person in charge of premises will have to produce the records maintained by a registered taxable person at the said premises for his scrutiny within a reasonable time.

However, records must be produced within fifteen working days of making the demand or such further extended period that may be allowed by the person who made the request for the documents.

**Officers required to assist CGST/SGST officers**

**Officers of following Departments have been legally required to assist Central tax officers in the implementation of this Act:**

Police

Railways

Customs

Officers of state/ central government engaged in collection of land revenue;

All village officers;

Officers of State tax and UT tax

Documents – must be produced

The records as **prepared or maintained** by the registered taxable person and **declared to the CGST/SGST officer** as may be prescribed;

Trial balance or its equivalent;

Statements of annual financial accounts, duly audited, wherever required;

Cost audit report, if any, under section **148** of the Companies Act, 2013;

The income-tax audit report, if any, under section **44AB**

Of the Income-tax Act, 1961.

Any other relevant record

Further discussion

Sec 73/ 74

Aftermath of inspection, search, seizure, arrest

