



**The Institute of  
Cost Accountants  
of India (ICAI)**

**Goods & Services Tax (GST) Certification Course**

# Disclaimer

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The presentation has been prepared to provide an overview of the applicable law pertaining to the subject matter. For detailed insight and for better understanding, its is advised to refer to relevant provisions in the Act and the related rules & notifications.



# Inspection, Search, Seizure & Arrest


# Provisions under the Act

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- Power of Inspection, Search and Seizure (Section 67)
- Inspection of goods in movement (Section 68)
- Power to arrest (Section 69)
- Power to summon (Section 70)
- Access to business premises (Section 71)
- Officers required to assist CGST/ SGST officers (Section 72)

# Inspection, Search & Seizure

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- *U/s 67 of the CGST Act*, an officer not below the rank of Joint Commissioner to authorise in writing an inspection or search & seizure.
- *U/s 67(1) of the CGST Act*, the authorisation to inspect can be given only if the Proper Officer has reasons to believe that 
  - the person concerned has done one of the following:
    - suppressed any transaction of supply of goods or services of both
    - suppressed stock of goods in hand
    - claimed excess input tax credit
    - contravened any provision of the Act/ Rules to evade tax.
  - a 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
    - has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act

# Inspection & Search – Is there a difference?

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- ‘Inspection’ is the act of examining something, often closely. In tax/ legal language, it is a softer provision than search. It enables officers to access any place of business of a person in order to check certain goods or transactions.
- ‘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.

# Inspection, Search & Seizure

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- Authorisation can be given to an officer to carry out inspection of any of the following:
  - any place registered/ not registered of business of a taxable person
  - any place of business of a person engaged in the business of transporting goods whether or not he is a registered taxable person
  - any place of business of an owner or an operator of a warehouse or a godown.
- If, pursuant to the inspection or otherwise, the officer has reason to believe that goods liable to confiscation or documents relevant for or useful in any proceedings are secreted at any place, the premises, upon authorisation in writing, may then be searched and such goods, documents or books or things may be seized. *Sec 67(2) of CGST Act*
- Inspection or search & seizure authorization is to be issued in form GST INS-01

# Reasons to believe

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- ‘Reason to believe’ means having knowledge of facts (although does not mean having direct knowledge), that would make any person, knowing the same facts, to reasonably conclude the same thing.
- As per the Indian Penal Code, 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 is a determination based on intelligent examination and evaluation. It is different from a purely subjective consideration, i.e., an opinion. It is based on facts rather than an interpretation of facts.
- GST Act does not mention recording the reasons to believe. In fact, Finance Act 2017 has amended Sec 132(1) & Sec 132(1A) of Income Tax Act retrospectively stating, that reason to believe, shall not be disclosed to any person or any authority or the Appellate Tribunal.





- During search, the authorised officer can force open door of any premises and break open any almirah, box, electronic devices etc. in which he suspects that any goods, accounts or documents are concealed and access to which is denied. The authorised officer can also seal the premises where the access is denied. *Sec 67(4) of CGST Act*
- Any goods, documents, books or things liable for seizure, the officer shall make an order of seizure in form GST INS-02. *Sec 67(11) of CGST Act*
- An inventory of such goods, documents, books or things so seized shall be made by the officer seizing such goods and get it signed by the person. *Rule 139(5) of CGST Rules*
- Where it is not practicable to seize any such goods, the officer may serve on the owner or the custodian of the goods, an order of prohibition in form GST INS-03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. *1<sup>st</sup> proviso to Sec 67(2) of CGST Act*

# Search & Seizure - Procedure

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- The officer, by notification can dispose of certain categories of goods (perishable or hazardous, fast depreciable in value, storage space constraints etc.) immediately after seizure. *Sec 67(8) of CGST Act*
- An inventory of such goods so seized and disposed immediately shall be made by the officer seizing such goods. *Sec 67(9) of CGST Act*
- Upon seizing the goods which are perishable or hazardous in nature, if the person pays an amount equivalent to the market value of the goods or the amount of tax, interest and penalty, whichever is lower, the goods shall be released by an order in form GST INS-05. *Rule 141(1) of CGST Rules*
- The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall apply. 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 or Commissioner of SGST. *Sec 67(10) of CGST Act*

# Search & Seizure - Safeguards

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- Seized goods or documents should not be retained beyond the period necessary for their examination in an inquiry or proceedings. *2<sup>nd</sup> proviso to Sec 67(2) of CGST Act*
- The documents, books or things seized during the proceedings or produced by the person, if not relied upon for the issue of the notice, to be returned within 30 days of the issue of the notice. *Sec 67(3) of CGST Act*
- Provided not prejudicially affecting the investigation, in presence of the Officer, photocopies of the documents can be taken by the person from whose custody documents are seized. *Sec 67(5) of CGST Act*
- Provisional release of seized goods upon execution of Bond in form GST INS-04 and furnishing of sufficient security or on payment of applicable tax, interest and penalty. *Sec 67(6) of CGST Act*
- If a notice is not issued within 6 months of its seizure, goods shall be returned to the person from whose possession it was seized. Period of 6 months can be extended on justified grounds up to a maximum period of 6 months by Principal Commissioner/ Commissioner. *Sec 67(7) of CGST Act*


# Inspection of goods in movement

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- Person in charge of a conveyance carrying any consignment of goods of value exceeding the prescribed amount need to carry with him such documents and such devices as may be prescribed. *Sec 68(1) of CGST Act*
- The details of the documents required to be carried shall be validated in such manner as may be prescribed. *Sec 68(2) of CGST Act*
- Where any conveyance is intercepted by the proper officer, 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. *Sec 68(3) of CGST Act*

# Power to arrest – Sec 69

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- Where the Commissioner has reasons to believe that the person has committed certain specified offences which are liable to prosecution and 
  - Where the amount of evasion is > Rs. 2 Cr, or
  - Where any offence liable for prosecution has been committed againhe may, by Order, authorise any officer to arrest such person.
- Where the arrest has been made and
  - where the amount of tax evasion is > Rs. 5 Cr., the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.
  - in other cases, bail shall be admitted or in default of bail, the person shall be forwarded to the custody of the Magistrate.
- In case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

# Offences where arrest are allowed

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- Supply of any goods or services or both without issue of any invoice with the intention to evade tax.
- Issue of any invoice or bill without supply of goods or services or both leading to wrongful availment or utilisation of input tax credit or refund of tax.
- Availment of input tax credit using the invoice or bill against which no supply was made or fraudulently availment of input tax credit without any invoice or bill.
- Collecting any amount as tax but failing to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due.
- Where any person convicted of an offence u/s 132 of CGST Act (related to prosecution) is again convicted of an offence - Repeat offender



- *U/s 70(1) of CGST Act*, 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 thingin any inquiry which an officer is making
- A person who is issued a summon is legally bound to attend either in person or by an authorised representative. The officer has the discretion to summon a person himself or to allow him to be represented by an authorised representative.
- Every such inquiry shall be deemed to be a judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code.



# Access to business premises

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- *Sec 71(1) of CGST Act* allows an officer, an audit party or a cost accountant/ chartered accountant (nominated u/s 66 of the 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 authorisation is to be issued by an officer not below the rank of Joint Commissioner.
- 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

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- Upon demand, 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.
- The following documents must be produced on demand
  - the records as prepared or maintained by the registered taxable person and declared
  - 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
- Records must be produced within 15 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 to assist Proper Officers

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- Officers of following Departments are legally required to assist the 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
  - Any other class of officers, as notified by the Government

# Thank You

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**KEEP  
CALM  
&  
FOLLOW  
THE RULES**