

Q 1. 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 2. 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;
- 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 3. 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 4. 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 5. What is meant by ‘reasons to believe’?

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 6. 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 7. 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,
- 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 8. 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 there under 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 there under with intent to evade payment of tax.

Q 9. 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 10. 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 11. 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.
- 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.

(Precaution needs to be taken by the owner/witnesses to sign to read the Panchnama carefully & sign if they find the proceedings to be true & valid, in case they are coerced to sign any statement which is not true & valid they have the right to object to the same & have the same corrected, before signing.)

- 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.

Q 12. 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 13. 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 14. 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 15. What is the distinction in law between 'Seizure' and 'Detention'?

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 16. What are the safeguards provided in G S T A c t (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;

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 17. 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 18. 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.

Q 19. 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;
- b. 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;
- c. All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Q 20. 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.