

INSPECTION, SEARCH, SEIZURE AND ARREST

SECTION 67: POWER OF INSPECTION SEARCH & SEIZURE

When Inspection can be carried out by PO [Section 67(1)]

PO not below the rank of JOINT COMMISSIONER, if has **reason to believe** that-

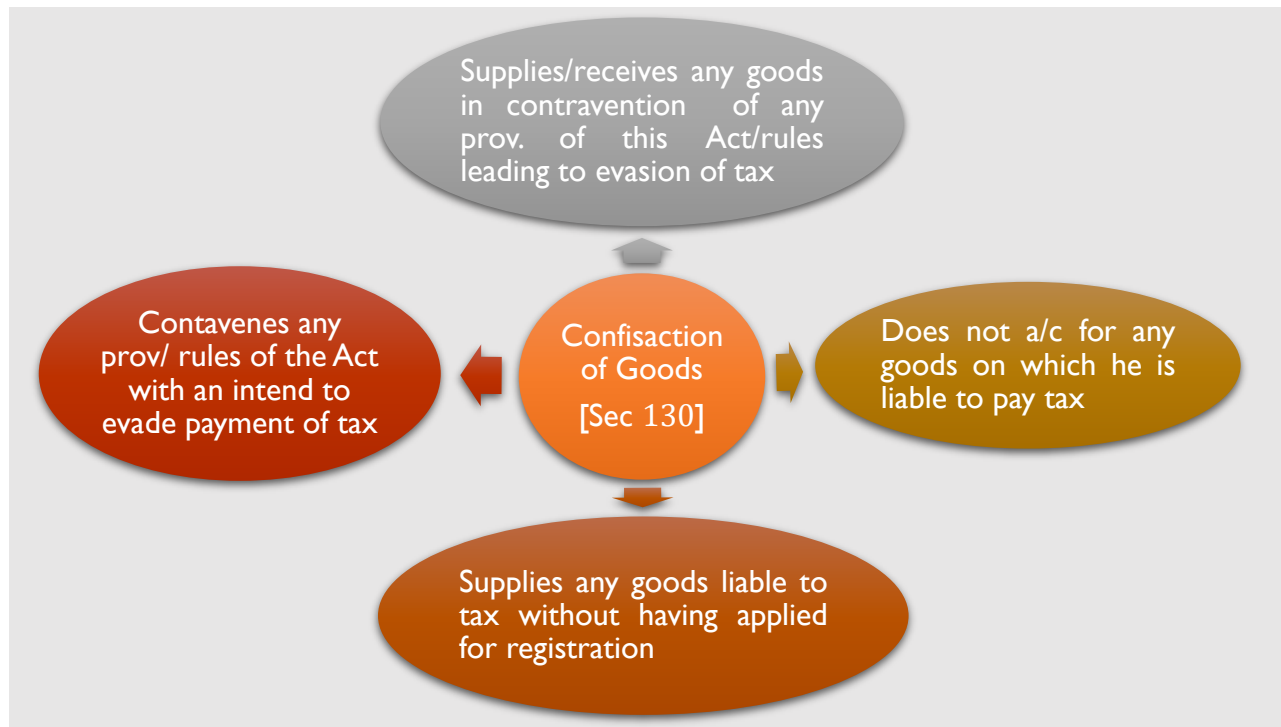
- a) A **Taxable person** has
 - **Suppressed any transaction** of supply of goods and/or services, or
 - **Suppressed the stock of goods in hand**, or
 - Has **claimed ITC in excess** of his entitlement under the Act, or
 - Has **indulge in contravention** of any of the provisions of this Act or rules made there under to evade tax under this Act; or
- b) Any **person engaged in transporting** of goods or an **owner / operator** of a warehouse / godown / any other place, has kept goods which have
 - Escaped payment of tax
 - Has kept accounts / goods in a manner that is likely to cause evasion of tax.

Inspection can be carried out by PO only after written authorization by an officer of the rank of Joint Commissioner or above. [Section 67]

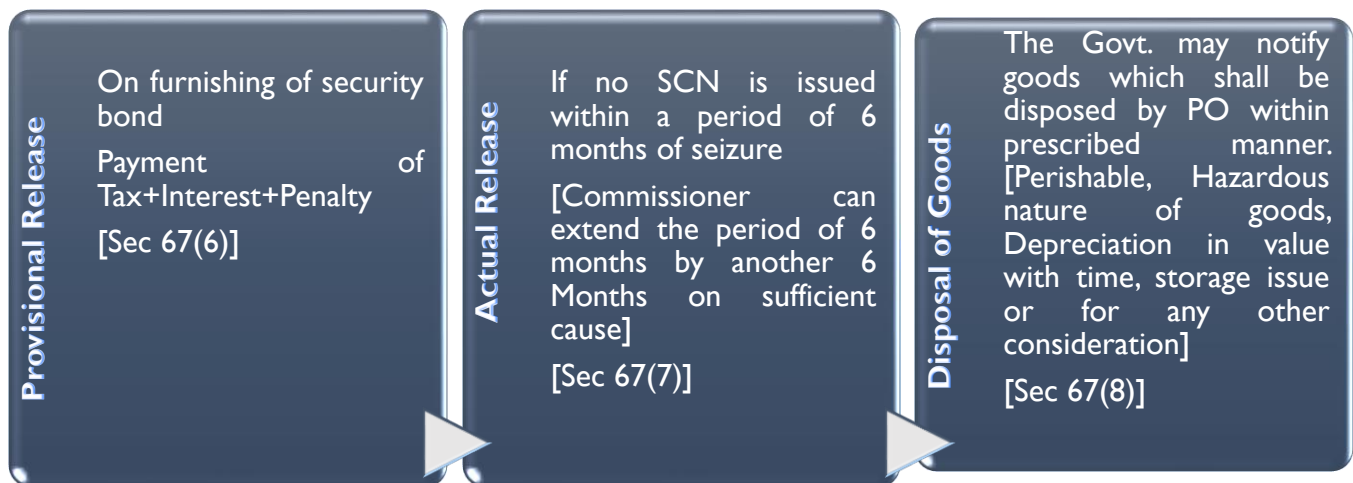
SECTION 67(2): SEARCH AND SEIZURE

Where the PO, not below the rank of JC, has reason to believe that any goods liable to confiscation or any document, or books or things, are secreted in any place, he may suo-moto or authorize any other officer to search, seize & confiscate

- During search, officer has power to break open the door / almirah or box of the premise if access to the same is denied and in which any goods, account, registers or documents are suspected to be concealed.
- Authorised officer can also seal the premises if access to it denied.
- The person from whom these are seized shall be entitled to take copies / extracts of seized records.
- The seized documents/books/things shall be retained only till the time the same is required for examination/enquiry/proceedings and if these are not relied on for the case then the same shall be returned within 30 days from the issuance of SCN.



MANNER & RELEASE OF CONFISCATED GOODS / DOCUMENTS



BASIC REQUIREMENTS TO BE OBSERVED DURING SEARCH OPERATIONS

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 be 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 premise.
- 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 of 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 the 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.

SEARCH WARRANT AND ITS CONTENTS

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:

- The **violation** under the Act,
- The **premises** to be searched,
- The **name and designation** of the **person authorized** for search,

- The **name of the issuing officer** with full designation along with his round seal,
 - **Date** and **place** of issue,
 - **Serial number** of the search warrant,
 - **Period of validity** i.e., a day or two days etc.
- Where seizure and confiscation is not practicable, PO shall issue Detention Order which shall be served on the owner or the custodian of goods that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.
 - PO shall prepare inventory where seizure is undertaken by him.
 - Search & Seizure shall be carried out in accordance with prov. of CPC, 1973. [One imp modification u/s 165(5) of CPC, the copies of any record made in course of search has to be sent to Principal Commissioner / Commissioner of CGST instead of Nearest Magistrate empowered to take cognizance of the offence.

SAFEGUARDS PROVIDED FOR IN RESPECT OF SEARCH & SEIZURE

- **Seized goods** or documents should **not be retained beyond the period** necessary for their examination.
- **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 6 months** of its seizure, goods shall be **returned to the person** from whose possession it was seized. This period of 6 months can be extended on justified grounds up to a further period of **Max. 6 months**.
- An **Inventory of seized goods** shall be made by the seizing officer.
- Certain specified categories of goods such as **perishable, hazardous** etc. can be **disposed of immediately** after seizure. For instance, Newspapers, saffron, petroleum products, red sander etc.
- Provision of **CPC 1973** shall apply.

SECTION 68: GOODS IN MOVEMENT

Inspection can also be carried out of a conveyance, carrying a consignment of value exceeding specified limit. The Person in charge of a conveyance has to produce prescribed documents [E-Way Bill] / devices for verification & allow inspection.

SECTION 69: POWER TO ARREST

Meaning of Arrest: Taking into custody of a person under some lawful command or authority.

Authorization of arrest by the proper officer: The commissioner can authorize an officer if he has reason to believe that the person has committed an offence attracting a punishment prescribed u/s 132(1)(a)/(b)/(c)(d) or sec 132(2). This essentially means that a person can be arrested only where the tax evasion is **more than ₹ 2 Crores**. However, the monetary limit shall not be applicable if the offences are again committed (even after being convicted) i.e., repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

Safeguards for a person who is placed under arrest:

- 1 • If a person is arrested for 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.
- 2 • If a person is arrested for a non- cognizable and bailable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the magistrate.
- 3 • All arrest must be in accordance with the prov. of CPC, 1973 relating to arrest.

Guidelines for arrest:

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 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:

- ❖ to ensure proper investigation of the offence;
- ❖ to prevent such person from absconding;
- ❖ master minds or key operators effecting proxy / benami imports / exports in the name of dummy or non-existent persons / IECs, etc.;
- ❖ master minds or key operators effecting proxy / benami imports / exports in the name of dummy or non-existent persons / 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.

Cognizable
Offence
(Non-
bailable)

Serious Category of offence in respect of which a police officer has authority to make an arrest without a warrant

Offences relating to taxable goods and/ or services where the amount of tax evaded or the amount of ITC wrongly availed or the amount of refund wrongly taken exceeds **₹ 5 Crores**, it shall be Cognizable & Non- bailable.

Non
Cognizable
Offence
(Bailable)

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 order of court.

Other offences under the Act are Non-Cognizable and bailable and all arrested persons shall be released on bail by DC/AC.

Supplies any goods or services or both **without issue of invoice**, with the intention to evade tax

Issue any invoice or bill **without supply** of goods or services or both leading to wrongful availment or utilisation of ITC or refund of tax

Arrest

Avails ITC using such invoices or bill **without supply** of goods or services or both

Collects any amount as **Tax but fails to pay** the same to the Govt. **beyond a period of 3 months** from the date on which such payment becomes due.

Guidelines for issue of summons:

The Central Board of Indirect taxes and Customs (CBIC) 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:

- ❖ 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;

- ❖ 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;
- ❖ 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 is 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;
- ❖ 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.

PUNISHMENT [SECTION 132(1)]

When a person commits any of the offences stated above the punishment will be as follows:

Where the amount of tax evaded or the amount of ITC wrongly availed or utilized or the amount of refund wrongly taken exceeds	Fine	Imprisonment
Sec 132(1)(i) Exceeding ₹ 5 crores	Yes	Up to 5 Years
Sec 132(1)(ii) Exceeding ₹ 2 crores – ₹ 5 crores	Yes	Up to 3 Years
Sec 132(1)(iii) Exceeding ₹ 1 crore – ₹ 2 crores	Yes	Up to 1 Year

SUBSEQUENT CONVICTION [SECTION 132(2)]

Where any person convicted 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 5 years & with fine.**

Section	Contents
Sec 70 : Power to summon	PO shall have power to summon any person whose attendance he considers necessary
Sec 71: Access to Registered Place	<ul style="list-style-type: none"> • The duly empowered officer can have access to any business premises, which may be required for the purpose of enquiry. • Officer can inspect BOA/computer/computer software/documents & such other things as may be required. • Person in charge of the premise are bound to furnish the required documents and also required to furnish required documents within 15 days to audit party deputed by the PO or the CA / CMA who has been deputed by commissioner to carry special audit. • The following records are required to be produced, if called for: <ul style="list-style-type: none"> ☞ Records prepared & maintained by the registered person & declared to the PO in prescribed manner. ☞ Trial Balance or its equivalent. ☞ Statement of Annual Financial Accounts, duly audited. ☞ Cost Audit Report, if any. ☞ The Income - Tax Audit Report, if any. ☞ Any other relevant record.
Sec 72 : Officers to Assist	All officers of Police, Railways, Customs and those officers engaged in the collection of land revenue, including village officers, officers of SGST/UTGST etc. shall assist the PO's in the implementation of this Act.

*** Penalty in case of non-appearance after summon u/s 122(3)(d) = Max ₹ 25,000/-.**