



Taxpayer's Rights during Search and Seizure under GST

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*Collecting more taxes than is
absolutely necessary is
legalized robbery*

- CALVIN COOLIDGE

Section 67(1) : Inspection by Department

SECTION 67. Power of inspection, search and seizure. — (1) Where the proper officer, not below the rank of **Joint Commissioner**, has **reasons to believe** that —

(a) a taxable person has **suppressed** any transaction relating to supply of goods or services or both or the stock of goods in hand, or has **claimed input tax credit in excess of his entitlement** under this Act or has indulged in **contravention of any of the provisions of this Act** or the rules made thereunder to **evade tax** under this Act; or

(b) any 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 or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

Section 67(2): Search and Seizure

(2) Where the proper officer, not below the rank of **Joint Commissioner**, either pursuant to an inspection carried out under sub-section (1) or otherwise, has **reasons to believe** that any **goods liable to confiscation or any documents or books or things**, which in his opinion shall be useful for or relevant to any proceedings under this Act, are **secreted** in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things :

Provided that where it is **not practicable to seize any such goods**, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer :

Provided further that the documents or books or things so seized shall be retained by such officer **only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.**

Legal Issues in Search:

1. Proper Authority for carrying out Search – Pioneer Cooperative Car Parking Services – Calcutta High Court 2019(28) GSTL 193 (Cal.) – The officer authorizing the search should not be below the rank of Joint Commissioner – The Search proceedings shall be void ab initio.

2. Meaning of term “Secreted” – **Rajeev Traders v/s State of UP 2019(29) GSTL 9 (All.)** – Where the goods were lying in a disclosed place but not recorded in books of accounts, it shall be deemed that the taxpayer has secreted the goods at the place. But Vice versa, Search can only be carried at the place where goods are secreted. Therefore where goods are already disclosed, it cannot be called to be secreted. Under those circumstances 67(1) may be invoked.

3. Right of privacy of the taxpayer and family Members – Search cannot be violative of Article 21 of Constitution of India.

Legal Issues in Search:

4. Abuse of power granted by Section 67(2) – Investigation against the search team – Presh Nathalal Chauhan – Gujarat High Court.

5. Presence of witness from locality as per CrPC – Subhash Joshi & Others – MP High Court

6. Time Barring u/s 73/74 – Where the time period u/s 73/74 has elapsed, no search can be carried out for said period.

7. Principal of Natural Justice must be followed

8. Search Warrant must specify the place of search – Search beyond the warrant will be illegal – Department liable to get fresh orders for the same.

Other Provisions of Sec 67

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, **which have not been relied upon for the issue of notice under this Act** or the rules made thereunder, **shall** be returned to such person **within a period not exceeding thirty days** of the issue of the said notice.

(4) The officer authorized under sub-section (2) **shall have the power to seal or break open the door** of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, **where access to such premises, almirah, electronic devices, box or receptacle is denied.** – **Steel Hypermart India Pvt Ltd – 2019(22) GSTL 321 (Kar.)**

(5) The **person from whose custody** any documents are seized under sub-section (2) **shall** be entitled to make copies thereof or take extracts therefrom in the presence of an authorized officer at such place and time as such officer may indicate in this behalf **except** where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

Other Provisions of Sec 67

(6) The goods so seized under sub-section (2) shall be released, on a **provisional basis**, upon **execution of a bond and furnishing of a security**, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

Power to arrest : Section 69

SECTION 69. Power to arrest. — (1) Where the **Commissioner** has reasons to believe that a person has **committed** any offence specified 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, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), —

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the 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.

Precautions before arrest:

1. Arrest cannot take place merely on difference of opinion between the department and the taxpayer.
2. Section 132 is applicable only in case of habitual offender or where the offence has been committed and proved – Makemytrip- Delhi High Court – **Jayachandran Alloys (P) Ltd – 2019 (25) GSTL 321 (Mad.)**
3. Section 132 cannot be invoked before the assessment/adjudication is complete – Before that it will be deemed that the department has gone beyond jurisdiction.
4. In case of non-bailable arrest, the taxpayer must be informed of reasons of arrest and also be presented before the magistrate within 24 hours.

Provisional Attachment of Property (Section 83)

SECTION 83. Provisional attachment to protect revenue in certain cases. — (1) Where during the pendency of any proceedings under section 62 (Assessment of Non Filers) or section 63 (Assessment of Unregistered Person) or section 64 (Summary Assessment) or section 67 (Inspection, Search etc.) or section 73 or section 74, the **Commissioner** is of the opinion that for the purpose **of protecting the interest of the Government revenue**, it is **necessary** so to do, he may, by order **in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.**

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Aspects in respect of Attachment of Property

1. The interest of the revenue must be protected.
2. It should be necessary to attach the property. Reasons must be provided with legal backing. Merely because search has been carried out the department does not get right to attach the property.
3. Commissioner cannot delegate the power u/s 83.
4. Opportunity for hearing shall be granted within 7 days of attachment of property. Where Commissioner is satisfied with the reply, the property in question must be released.
5. The Commissioner should be fully satisfied; subjective satisfaction will not empower him to attach the properties of the taxpayer.
6. Validity of attachment u/s 83 is merely one year – Section 83(2).
7. Order is not appealable – writ to be filed with High Court under Article 226

Access to Business Premises (Section 71)

SECTION 71. Access to business premises. — (1) Any officer under this Act, authorized by the proper officer no below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. (2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorized under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66 —

- (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
- (ii) trial balance or its equivalent;
- (iii) statements of annual financial accounts, duly audited, wherever required;
- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (18 of 2013);
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961); and
- (vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

THANK YOU

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