



INSPECTION, SEARCH, SEIZURE AND ARREST



The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- understand and explain the meaning of inspection, search, seizure and summons.
- understand and describe the legislative power to arrest.
- identify and appreciate the rights and duties of persons against such actions.
- gain knowledge pertaining to the procedural requirements to be complied in this regard.

1. INTRODUCTION



What is the need for inspection, search, seizure & arrest?

In any tax administration the provisions for Inspection, Search, Seizure and Arrest are provided to protect the interest of genuine tax payers (as the Tax evaders, by evading the tax, get an unfair advantage over the genuine tax payers) and as a deterrent for tax evasion. These provisions are also required to safeguard Government's legitimate dues. Thus, these provisions act as a deterrent and by checking evasion provide a level playing field to genuine tax payers.


It may be mentioned that the options of Inspection, Search, Seizure and Arrest are exercised, only in exceptional circumstances and as a last resort, to protect the Government Revenue.

Chapter XIV – Inspection, Search, Seizure and Arrest [Sections 67 to 71] of the CGST Act stipulates the provisions relating to inspection, search, seizure and arrest. State GST laws also prescribe identical provisions in relation to inspection, search, seizure and arrest.

Provisions of inspection, search, seizure and arrest under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

2. POWER OF INSPECTION, SEARCH AND SEIZURE [SECTION 67]

'Inspection' is a new provision under the 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.



Inspection

As per Section 67 of CGST Act, inspection can be carried out by proper officer only upon a written authorization given by an officer of the rank of Joint Commissioner or above.

Circumstances for carrying out inspection

A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that

- (a) taxable person has done one of the following:-
 - i. suppressed any transaction of supply of goods or services;
 - ii. suppressed stock of goods in hand;
 - iii. claimed excess input tax credit;
 - iv. contravened any provision of the Act to evade tax;
- (b) any person engaged in transporting of goods 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, whether or not he is a registered taxable person.
- (c) an owner or an operator of a warehouse or a godown 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.

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'



**Meaning of
Reasons 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.

Any tax law should provide powers to the enforcing officers, to check the evasion of tax. As per the dictionary meanings and as noted in different judicial pronouncements, the term 'search', in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under proper and valid authority of law.

Meaning of Search

The term 'seizure' has not been specifically defined in the GST Act. 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.

Meaning of Seizure

During such inspection, if any goods which are liable for confiscation under the Act are found or any documents/books of accounts are found, which may be useful for the department in the proceedings for demand of tax, the officers conducting the inspection could search and seize such goods/documents and books.

Search & Seizure

Confiscation of goods

As per section 130 of CGST 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 thereunder 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 Act or rules made thereunder with intent to evade payment of tax.

The person from whom documents and books of accounts are thus seized, shall have the right to take copies of such documents and books of accounts, subject to the approval of the Proper Officer.

Powers of officer during search

An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents/books/things (relevant for any proceedings under the Act) from the premises searched. However, if it is not practicable to seize any such goods then the same may be detained. The person from whom these are seized shall be entitled to take copies/extracts of seized records. 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.

The seized documents/books/things shall be retained only till the time the same are 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 show cause notice

Manner of release of confiscated goods, documents

- ❖ **Provisional basis:-**The seized goods shall be released on a provisional basis, on execution of bond and furnishing of prescribed amount of security or on payment of applicable tax, interest and penalty.
- ❖ **Actual return of goods:-** In case of seizure of goods, a notice has to be issued within six months, if no notice is issued within a period of six months then all such goods shall be returned. However, this period of six months can be extended by Commissioner for another six months on sufficient cause.
- ❖ **Disposal of goods:-**The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, notify the goods which shall be disposed by the proper officer in the prescribed manner. The inventory of such goods shall also be prepared in the prescribed manner.



Procedure for conducting search

To ensure that the provisions for search and seizure are implemented in a proper and transparent manner, the Act stipulates that the searches and seizures shall be carried out in accordance with the provisions of Criminal Procedure Code, 1973. Section 100 of the Code of Criminal Procedure describes the procedure for search.



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 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.

- ❖ 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 incharge/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 premise 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.

Safeguards provided for in respect of Search or Seizure

Certain safeguards are provided in section 67 of CGST Act in respect of the power of search or seizure. These are as follows:

- ❖ 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 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;

- ❖ 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;
- ❖ 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.

3. INSPECTION OF GOODS IN MOVEMENT [SECTION 68]

Inspection can also be done of the conveyance, carrying a consignment of value exceeding specified limit. The person in charge of the conveyance has to produce prescribed documents/devices for verification and allow inspection. E-way Bill has been prescribed for the said purpose. The same has already been discussed in detail in Chapter-11: Accounts and Records. Inspection during transit can be done even without authorisation of Joint Commissioner.

4. POWER TO ARREST [SECTION 69]

The term 'arrest' has not been defined in the GST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some



Arrest

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.

Arrests can be carried out only where the person is accused of offences specified for this purpose and the tax amount involved is more than specified limit. Further, the arrests under GST Act can be made only under authorisation from the Commissioner. Whenever the Commissioner has reason to believe that any

person has committed any such offence, he can authorize any other officer subordinate to him, to arrest such person.

Various offences committed in connection with evasion of tax are also punishable with imprisonment for which purpose, the offender has to be prosecuted before appropriate Court. The nature of offences which are thus punishable with imprisonment are prescribed in Section 132 of the Act.

Authorization of arrest by the proper officer

The Commissioner can authorize an 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 section 132(2) of the CGST Act. The detailed provisions relating to section 132 have been discussed in detail in Chapter-17: Offences and Penalties. This essentially means that a person can be arrested only where the tax evasion is more than ₹ 2 crore. However, the monetary limit shall not be applicable if the offences are committed again even after being convicted earlier 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

There are certain safeguards provided under section 69 for a person who is placed under arrest. These are:

- ❖ 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;
- ❖ If a person is arrested for a non- cognizable and bailable offence, the Deputy/ Assistant Commissioner 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.

Section 132 of the Act also prescribes which types of offences are cognizable and non-bailable and which types of offences are non-cognizable and bailable.

Meaning of cognizable offence.

Generally, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court.

Meaning of non-cognizable offence.

Non-cognizable offence means 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 a court order.

Cognizable and non-cognizable offences under CGST Act.

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 ₹ 5 crore, it shall be cognizable and non-bailable and in such cases the bail can be considered by a Judicial Magistrate only.

Other offences under the Act are non-cognizable and bailable and all arrested persons shall be released on bail by Deputy/ Assistant Commissioner.

Precaution taken during arrest

The provisions of the Code of Criminal Procedure, 1973 relating to arrest and the procedure thereof must be adhered to in all situations amounting to arrest. It is therefore necessary that all field officers of CGST be fully familiar with the provisions of the Code of Criminal Procedure, 1973.

One important provision to be taken note of is Section 57 of Cr.P.C., 1973 which provides that a person arrested without warrant shall not be detained for a longer period than, under the circumstances of the case, is reasonable but this shall not exceed 24 hours (excluding the journey time from place of arrest to the Magistrate's court). Within this period, as provided under section 56 of Cr.P.C., the person making the arrest shall send the person arrested without warrant before a Magistrate having jurisdiction in the case.

 **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 mensrea/guilty mind is palpable;
- ❖ prevention of the possibility of tampering with evidence;
- ❖ intimidating or influencing witnesses; and
- ❖ large amounts of evasion of tax.

 **5. POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS [SECTION 70]**

During the course of any enquiry under this Act, the proper officer may summon any person, to appear before him and give evidence or produce documents. The person to whom such summon has been issued is duty bound to appear before the officer and bound to tender evidence. He is also bound to produce all documents which were required to be furnished.

 **Responsibilities of the person so summoned**

A person who is issued summon is legally bound to attend either in person or by

an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.



Consequences of non-appearance to summons

The proceeding before the official who has issued summons is deemed to be a judicial proceeding. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case he gives false evidence, he can be prosecuted under section 193 of the IPC. In addition, if a person does not appear before a CGST/ SGST officer who has issued the summon, he is liable to a penalty upto ₹ 25,000 under section 122(3)(d) of the Act.



Guidelines for issue of summons

The Central Board of Excise and Customs (CBEC) 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.



Precautions to be observed while issuing summons

The following precautions should generally be observed when summoning a person: -

- (i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.
- (ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.
- (iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.
- (iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.



6. ACCESS TO BUSINESS PREMISES [SECTION 71]

During the course of any enquiry under this Act, the duly empowered officer can have access to any business premises, which may be required for the purpose of such enquiry. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons in charge of such premises to furnish the required documents. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit. The following records are

covered by this provision and are to be produced, if called for.

- (i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.
- (ii) trial balance or its equivalent.
- (iii) statements of annual financial accounts, duly audited.
- (iv) cost audit report, if any.
- (v) the income - tax audit report, if any.
- (vi) any other relevant record.



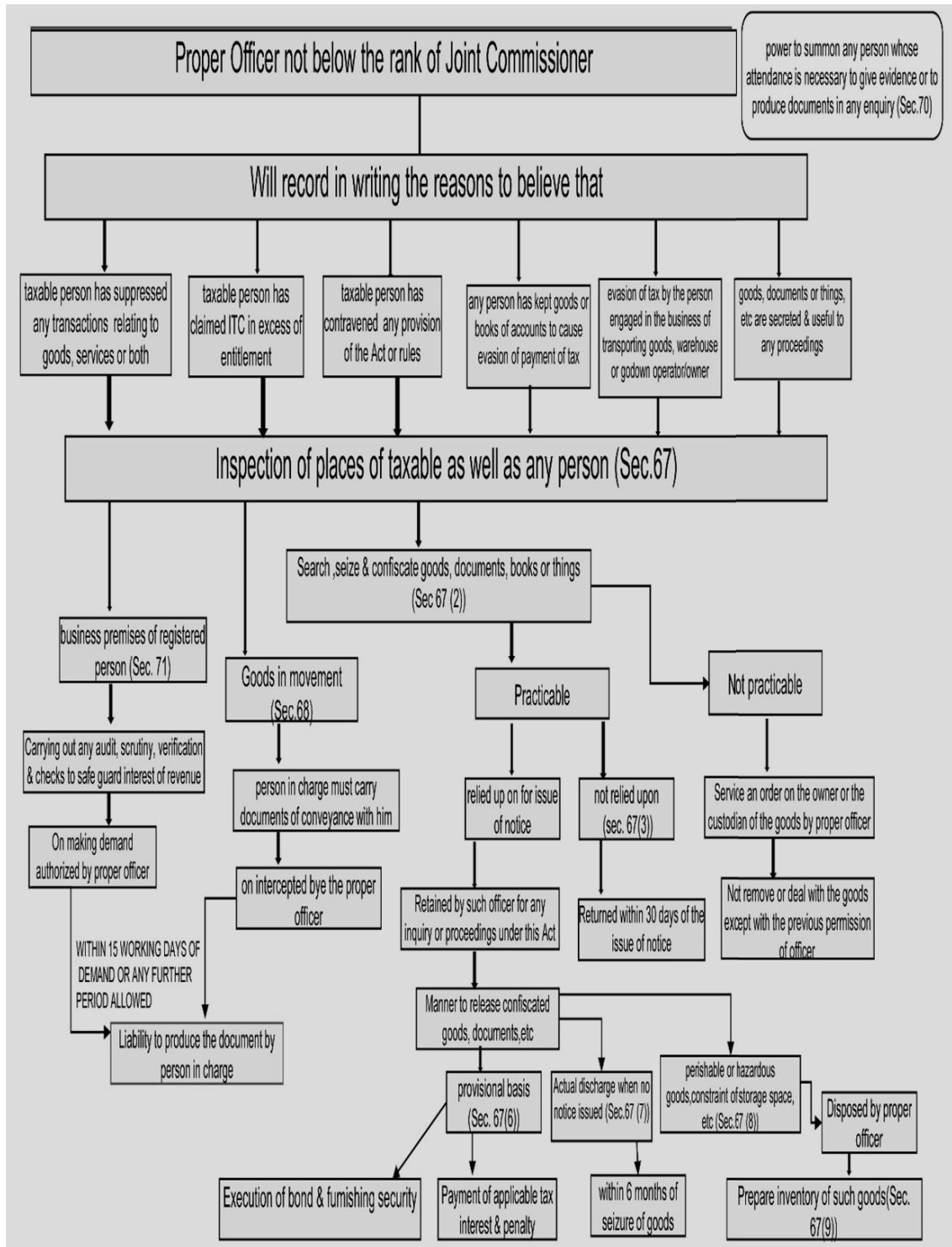
7. OFFICERS TO ASSIST PROPER OFFICERS [SECTION 72]

Under section 72 of CGST Act, the following officers have been empowered and are required to assist CGST officers in the execution of CGST Act. The categories specified are as follows:

- i. Police;
- ii. Railways
- iii. Customs;
- iv. Officers of State/UT/ Central Government engaged in collection of GST;
- v. Officers of State/UT/ Central Government engaged in collection of land revenue;
- vi. All village officers;
- vii. Any other class of officers as may be notified by the Central/State Government.

LET US RECAPITULATE

The provisions relating to inspection, search and seizure have been summarised by way of a diagram to help students remember and retain the provisions in a better and effective manner:-



TEST YOUR KNOWLEDGE

1. *Who can order for carrying out "Inspection" and under what circumstances? Can any premises be inspected by CGST officers?*
2. *Who can order for search and seizure under the provisions of CGST Act?*
3. *What powers can be exercised by an officer during valid search?*
4. *What are the duties of the person to whom summons has been issued?*
5. *What is meant by the term "arrest"? When can the proper officer authorize 'arrest' of any person under CGST Act?*

ANSWERS/ HINTS

1. Refer Para -2
2. Refer Para -2
3. Refer Para -2
4. Refer Para -5
5. Refer Para - 4

