

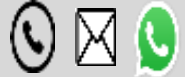


# Lawgics

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## Section 67 of CGST Act, 2017 read with Rule 139, 140 & 141

Section 67: Power of inspection, search and seizure	
Section 67(1)	<p>Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—</p> <p>(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</p> <p>(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.</p>
Rule 139: Inspection, search and seizure	
Rule 139(1)	<p>Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in FORM GST INS-01 authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.</p>
Section 67(1) read with Rule 139(1) Interpretation	<p><b>Requirement of Inspection</b></p> <p>If an officer, not below the rank of joint Commissioner, has reasons to believe that: -</p> <ol style="list-style-type: none"><li><b>1) Taxable Person</b><ul style="list-style-type: none"><li>Has suppressed transactions relating to supply</li><li>Has suppressed transactions relating to stock</li><li>Has claimed excess ITC</li><li>Has claimed excess Refund</li><li>Has indulged in contravention of the provisions of this Act or the rule made there under to evade tax under the Act</li></ul></li><li><b>2) Transporter or warehouse operator</b><ul style="list-style-type: none"><li>Has engaged in the business of transporting goods on which payment of tax has been escaped.</li><li>Has stored any goods which have escaped payment of tax</li><li>Has maintained accounts or goods in such manner which may cause evasion of tax</li></ul></li></ol>

	<p>Such officer, <b>not below the rank of JC</b>, may authorize any officer subordinate to him, to inspect or search any place of business of:</p> <ul style="list-style-type: none"> <li>➤ Any taxable person</li> <li>➤ Any transporter, owner or operator of warehouse, godown or owner of any other place where goods are stored</li> </ul> <p><b>By issuing an authorization in GST INS-01</b>, such authorized officer shall conduct the <b>Inspection, or Search or seizure of goods, documents, books or things liable to confiscation</b>.</p>
Section 67(2)	<p>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:</p> <p>Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised 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:</p> <p>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.</p>
Rule 139(2)	Where any goods, documents, books or things are liable for seizure under subsection (2) of section 67, the proper officer or an authorised officer shall make an order of seizure in FORM GST INS-02.
Rule 139(3)	The proper officer or an authorised officer may entrust upon the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer.
Rule 139(4)	Where it is not practicable to seize any such goods, the proper officer or the authorised 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.
Rule 139(5)	The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, inter alia, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.
Section 67(2) read with Rule 139(2), 139(3), 139(4) & 139(5) <b>Interpretation</b>	<p><b><u>Power to Search &amp; Seizure</u></b></p> <p>During Inspection or otherwise, if the proper officer has reasons to believe that the goods are liable to confiscation, or any books, documents or things are kept at any place which may be useful in any proceedings, he may authorize any other officer or himself, to search or seize such goods, documents or books or things and shall pass an order in INS-02 containing the details of location where inspection or search is conducted, Name &amp; GSTIN (if person is registered) and the person in whose presence such inspection or search is conducted.</p> <p>It shall also include the details of goods seized and details of books, documents, things seized and to whom such goods or things have been handed over for safe custody.</p> <p>In case it is not practicable to seize such goods, he may issue an order in INS-03 to the owner or custodian of goods that he shall not remove such goods or any part thereof, or otherwise deal with such goods without prior permission of such officer.</p> <p>A complete list of items that are seized shall be made which shall be signed by the person from whom such things are seized.</p>
Section 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.

Section 67(3) <b>Interpretation</b>	<b><u>Return of Books, Documents or things which are not relied upon</u></b> The proper officer shall return Books, Documents or things which are not relied upon for the issue of any further notice, within 30 days from the issue of said notice.
Section 67(4)	The officer authorised 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.
Section 67(4) <b>Interpretation</b>	<b><u>Power to sea or break open</u></b> The proper officer has the power to seal or break open the door of any premises, almirah, safe, electronic devices, box and receptacles in which any goods, accounts, register or documents of the person are suspected to be concealed, if such person denies the access to such premises, almirah, safe, electronic devices, box or receptacles to the proper officer.
Section 67(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 authorised 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.
Section 67(5) <b>Interpretation</b>	<b><u>Right of person to make copies of the documents seized</u></b> The person from whose custody any documents are seized may be allowed to make copies of those documents or files or take extracts therefrom in presence of authorized officer at such place and time as may be deemed fit by such officer.  If proper officer has the opinion that making copy or taking extracts thereof may prejudicially affect the investigation, he may disallow such person from doing so.
Section 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.
<b><u>Rule 140: Bond and security for release of seized goods</u></b>	
Rule 140	(1) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.  Explanation. - For the purposes of the rules under the provisions of this Chapter, the “applicable tax” shall include central tax and State tax or central tax and the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017).  (2) In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.
Section 67(6) read with Rule 140 <b>Interpretation</b>	<b><u>Release of seized goods on provisional basis</u></b> Any goods seized by the proper officer may be released on provisional basis if such person executes a bond in form INS-04 for the value of goods along with furnishing a security in the form of Bank Guarantee equalling to amount of tax, interest & penalty payable in respect of such seized goods.  In case the person to whom goods have been released on provisional basis fails to produce such goods on the appointed date and at place as indicated by the proper officer, the security furnished shall be encashed and adjusted against the liability amount of such seized goods.
Section 67(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.
Section 67(7) <b>Interpretation</b>	<p><b><u>Time period to serve notice for seized goods</u></b></p> <p>A notice needs to be served in cases where goods are seized within 6 months of the seizure of the goods which may be further extended to another 6 months by the proper officer, on sufficient cause being shown. However, if still no notice is issued, then seized goods must be returned back to the person from whom such goods were seized.</p>
Section 67(8)	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, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.
<b><u>Rule 141: Procedure in respect of seized goods</u></b>	
Rule 141	<p>(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.</p> <p>(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the proper officer may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.</p>
Section 67(8) read with Rule 141 <b>Interpretation</b>	<p><b><u>Disposal of Goods perishable or hazardous in nature.</u></b></p> <p>In such a situation, if person concerned from whom goods have been seized, <u>pays an amount equalling to the market value or the amount equalling to demand of tax, interest, penalty, or any other amount payable</u>, whichever is lower, then the proper officer shall release the goods and make an order in INS-05, on proof of payment of such amount or demand.</p> <p>Otherwise, the proper officer may dispose of such goods in open market and adjust the receipts against such demand of the tax, interest, penalty, or any other amount payable.</p>
Section 67(9)	Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.
Section 67(9) <b>Interpretation</b>	<p><b><u>Maintenance of inventory of seized goods</u></b></p> <p>The proper officer shall prepare an inventory of such goods or things as per Rule 139(5) and get it signed by the person from whom such goods or things are seized.</p>
Section 67(10)	The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.
Section 67(10) <b>Interpretation</b>	<p><b><u>Applicability of CrPC provisions</u></b></p> <p>All provisions contained in CrPC relating to search &amp; seizure shall, mutatis mutandis, apply to search and seizures provisions under GST. However, the word "Magistrate" shall be substituted by "Commissioner".</p> <p>Section 100 of Code of Criminal Procedure, 1973 highlights about the <b><u>Basic requirements to be observed during search such as:</u></b></p> <ul style="list-style-type: none"> <li>❖ No search of premises should be carried out without a valid search warrant issued by the proper officer.</li> <li>❖ There should invariably be a Lady Officer accompanying the search team to Residence.</li> </ul>

	<ul style="list-style-type: none"> <li>❖ Before starting the search, the proper officer should disclose their identity by showing their identity card to the person against whom search is conducted or to the person in charge of the premises.</li> <li>❖ 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 search warrant in token of having seen the same. The signature of at least 2 witnesses should also be taken on the body of the search warrant.</li> <li>❖ The search should be made in the presence of at least 2 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 witness should be briefed about the purpose of the search.</li> <li>❖ Before the start of the search proceeding, the team of officers conducting the search 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 should again offer themselves for their personal search.</li> <li>❖ A panchnama of the proceedings of the search should necessarily be prepared on the spot. A list of all goods, document recovered &amp; seized / detained should be prepared and annexed to the Panchnama. The Panchnama and the list of Goods / Documents seized / detained should be signed by the witnesses, the in charges / owner of the premises before whom search is conducted and also by officers duly authorized for conducting the search.</li> <li>❖ After the search is over, 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 officers who participated in search may also be written on the reverse side of search warrant.</li> <li>❖ The issuing authority of search warrant should maintain register of records of search warrant issued and returned and used.</li> </ul>
Section 67(11)	Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.
Section 67(11) <b>Interpretation</b>	<p><b><u>Seizure of Accounts, Documents or Registers</u></b></p> <p>Proper officer has the power to seize the Accounts, Documents or Registers of the person where he has the reasons to believe that any person has evaded or is attempting to evade the payment of any tax. He shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.</p>
Section 67(12)	The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.
Section 67(12) <b>Interpretation</b>	<p><b><u>Checking of Issuance of Tax Invoice or Bill of Supply.</u></b></p> <p>The commissioner or any officer authorised by him may make purchase any goods or service or both from any registered person to check their compliances related to the issuance of tax invoice or bill of supply. Also, in case of goods, the goods so purchased by such officer may be returned to such taxable person or any person in charge of the business premises to check that the refund towards the goods is duly made, after cancelling any tax invoice or bill of supply issued earlier.</p>