



Lawgics

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Section 69 of CGST Act, 2017

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 subsection (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 subsection (5) of section 132, the officer authorised 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.

Our Interpretation

Section 69(1)	<p><u>Power to Arrest</u></p> <p>This section specifies that if any person has committed any of the offences specified as below:</p> <p><u>Section 132(1)(a)</u>: Supply of any Goods or Services without issuance of Tax Invoice to evade Tax</p> <p><u>Section 132(1)(b)</u>: Issuance of Invoice or Bill without supply of Goods or services or both for wrongful availment or utilization of ITC or Refund of Tax</p> <p><u>Section 132(1)(c)</u>: Availing ITC using invoice as stated in clause (b)</p> <p><u>Section 132(1)(d)</u>: Collected any amount of tax but fails to pay same within 3 months from due date.</p> <p>Then, the Commissioner can pass orders for arrest of such person by authorised officer.</p>
Section 69(2)	<p><u>Informing Ground of Arrest and Production before Magistrate</u></p> <p>The officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours, in cases where the offence specified above is punishable u/s 132(1)(i) of the Act i.e. cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds Rs. 5 crores, with imprisonment for a term upto 5 years and with fine. This is because such offences are considered to be cognizable and non-bailable.</p>

Section
69(3)

- (a) All other offences under GST Act apart from the ones discussed in Section 69(1) are bailable offences, thus, the arrested person 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 have the same powers as an officer-in-charge of a police station, for the purpose of releasing an arrested person on bail.

Guideline to be followed during Arrest

The provisions of Code of Criminal Procedure, 1973 (CrPC) relating to arrest and the procedure thereof must be adhered to.

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

In a landmark judgment in the case of D. K. Basu Vs State of West Bengal reported in 1997 (1) SCC 416, The Hon'ble SC has laid down specific guidelines requires to be followed while making arrest.

- ❖ The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible, and clear identification and name tags with their designations. The particular of all such police personnel who handle interrogation of arrestee must be recorded in a register.
- ❖ That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a responsible person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
- ❖ A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- ❖ The person arrested must be made aware of his rights to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- ❖ An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and names and other particulars of police officials in whose custody the arrestee is.
- ❖ The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any person on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.
- ❖ Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
- ❖ The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

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