



# GST:

## Inspection, Search, Seizure & Arrest

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## Agenda

- Legal Provisions under GST
- Jurisprudence
- Clarifications
- Do's & Dont's

# Inspection vs Search



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## Inspection

- Access any place
- Only Place of Business
- Moderate
- No Break-Open

## Search

- Search any place
- Any Place [not limited to place of business]
- Strict
- Break-Open

# Section 67: Inspection



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## Proper Officer

- **Authorise:** [other officer]

- Jt. Commissioner
- Add. Commissioner
- Commissioner
- Pr. Commissioner

- **Inspection:**

- Inspector
- Superintendent
- Asst. Commissioner
- Dy. Commissioner
- Jt. Commissioner
- Add. Commissioner

# Section 67: Inspection



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## Any Place of Business of

- **Taxable Person**

- Suppressed supply of goods/ services
- Suppressed stock of goods
- Excess ITC
- Contravention of GST law to evade tax

- **Transporter; &**

- **Owner/ Operator of warehouse/ godown/ any place:**

- Keeping goods escaped tax
- Kept accounts/ goods in manner likely to cause tax evasion

# Section 67: Inspection



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## Read with Section 71: Access to Business Premise

- Any officer authorised by proper officer not below rank of Joint Commissioner:
- Inspect books, documents, computer, computer programs, software, other things for carrying our audit, scrutiny, verification and checks as may be necessary;

# Section 67: Inspection



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## Reasons to Believe

- **Reasons:**

- Statement of Facts to justify or reject something;
- Must be concrete
- Rational & not arbitrary

- **Believe**

- Good faith
- Honest
- Not mere suspicion

**Direct Nexus of Reasons with the formation of Belief**

# Section 67: Inspection



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## Reasons to Believe

- Reasons to Believe v/s Reasons to Suspect
- Reasons to Believe v/s Reasons to be Recorded



## RJ Trading [2021 (55) GSTL 277 (Del)]

- GST officers searched the premises of the Petitioner;
- Respective GST officer got intelligence to from another Commissionerate;
- Another Commissionerate was investigating another taxpayer and suggested the Respective GST officer to investigate the Petitioner;
- Hence, a search was conducted at the premises of Petitioner;
- Court observed that there was no concrete basis for the GST officer to form reasons to believe that the goods of Petitioner are liable to confiscation or documents, etc. are relevant for proceedings;
- The only basis is the referral from another Commissionerate and does not satisfy test of 'reasons to believe'.

# Section 67: Search & Seizure



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## Proper Officer

- **Authorise:** [himself or another officer]

- Jt. Commissioner
- Add. Commissioner
- Commissioner
- Pr. Commissioner

- **Search and Seizure:**

- Inspector
- Superintendent
- Asst. Commissioner
- Dy. Commissioner
- Jt. Commissioner
- Add. Commissioner

# Section 67: Search & Seizure



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## Cognizance

- Section 165 CrPC: Search by Police Officer
- Applicable for Search by GST Officer
- GST Commissioner to have powers of Magistrate
- GST Officer should record the reasons for search in writing
- Such record should be sent to Commissioner
- Owner/ Occupier of premise where search conducted may apply to Commissioner for such record

# Section 67: Search & Seizure



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- Pursuant to Inspection

- Any other Intelligence

- Reasons to Believe

- Goods liable to Confiscation

- Documents, Books or Things

- Secreted in any place

# Section 67: Search & Seizure



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## Break-Open

- Door of any premise
- Almirah
- Electronic device box
- Seizure not practical: Order for no remove or otherwise deal [without previous permission of such officer]

# Section 67: Search & Seizure



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## Documents, Books or Things

- Documents, Books or Things: So long as necessary for examination/ enquiry/ other proceedings
- Documents, Books or Things: Not relied upon in notice to be returned within 30 days of notice
- Make Copies of documents

# Section 67: Search & Seizure



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## Goods

- Provisionally release Goods:
- Payment of applicable tax, interest & penalty; or
- Bond [value of goods] & Furnishing Security [tax, interest & penalty]
- *Encash security for failure to produce goods*
  
- Notice:
- SCN within 6 months;
- 6 months period may be extended for another 6 months;
- Goods to be returned in absence of notice.
  
- Inventory of Goods

# Section 67: Search & Seizure



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## Disposal of Goods

- Perishable or Hazardous Goods
- Depreciation in value
- Storage Constraints

- *Release on payment of lower of:*
  - *Market price of goods*
  - *Tax , interest and penalty*

### Notified Goods

- Salt
- Newspaper
- Menthol, Camphor, Saffron,
- Petroleum products
- Dangerous drugs,
- Bulk Drugs & Chemicals
- Pharmaceuticals

- Red Sander
- Sandalwood
- Goods from Chapter 1 to Chapter 24 [Mainly Edible products]
- Provisionally released but goods not taken



## ANOPSINH KIRITSINH SARVAIYA [2020 (37) G.S.T.L. 171 (Guj.)]

- Petitioners godown was used for storing goods of certain parties whose goods were to be seized;
- Since the goods were stored at the godown of Petitioner, godown itself was sealed for indefinite period;
- The Court observed that if goods are liable for confiscation, the Department should take further steps;
- There is no reason to keep the godown sealed;
- Court ordered that:
  - Seal to be broken and goods if liable for confiscation be proceeded accordingly; and
  - Handover the possession of godown to the Petitioner.

## **GOLDEN COTTON INDUSTRIES [2019 (29) G.S.T.L. 587 (Guj.)]**

- Goods lying at the business premise of the Petitioner were seized;
- Petitioner argued that goods are kept at disclosed business premise and hence cannot be treated as 'secreted' to invoke search and seizure;
- The Court observed the meaning of the term 'secreted' which would mean hidden or concealed or things likely to be kept at any unusual place.
- The Court also held that the objective of Section 67 is to preserve and protect the documents, etc. pending tax determination;
- Hence, even where goods were kept at usual business place, the Court ordered in favour of revenue.
- Assessee was granted leave to file bond and security for release of goods.

## KANISHKA MATTA [2020 (42) G.S.T.L. 52 (M.P.)]

- Huge quantity of pan masala/ tobacco were found during search revealing tax evasion on said goods;
- During search at residential premise, huge cash was also found and seized;
- The Petitioner argued that Section 67 does not provides for seizure of 'Cash' and hence, it should be released;
- The Court held that Section 67 covers 'Things' and the general meaning of 'Things' can very well include 'Cash' [Court referred to Dictionary meaning of Things as per Whartons Law Lexicon];
- Petition was dismissed accordingly.

## PARESH NATHALAL CHAUHAN [2020 (36) G.S.T.L. 498 (Guj.)]

- Petitioner's residential premise was searched by GST officers with 1 CRPF officer;
- 3 women [i.e. Petitioner's mother, wife and young daughter] were also present in house along with other male members; No summon was issued for the Petitioner;
- Search was concluded on 1st day itself, still GST officers continued to stay at Petitioners house for 8 days;
- The family members were repeatedly asked about the Petitioner every day;
- Court observed that stay of GST officers was to intimidate the family/ petitioner & gross abuse of power;
- Court also observed that this may amount to illegal confinement under Section 348 of IPC;

## PRAKASHSINH HATHISINH UDAVAT [2019 (31) G.S.T.L. 583 (Guj.)]

- Petitioner was called by Assistant Commissioner of State Tax at the GST Bhavan;
- Petitioner's car and mobile was seized;
- Court observed that as per the seizure order, the goods were 'secreted' at GST Bhavan and hence, GST Bhavan was searched;
- Further, there was no authorization by the Joint Commissioner to carry out search;
- Court was inclined to impose damages upon the GST officer; however, upon Petitioner's request the Court avoided any cost;
- Court directed the registry to submit Court Order before Chief Secretary of the State with expectation that appropriate action will be taken.

## Search

- Search with only proper authorization issued by competent authority;
- Mention of DIN;
- In case of dead person, warrant should be in name of legal heirs to search;
- Search in residential house should be accompanied with lady officer;
- 2 or more independent witnesses preferably be respectable inhabitants of the locality [bank employees, professors, etc.]
- Officers to show their identity cards and offer for personal search of officer and independent witness;
- Obtain signature of person-in-charge of premises in the search warrant;

## Search

- Panchanama to be prepared recording the search proceedings;
- Special care/attention should be given to elderly, women and children present in the premises under search.;
- Children should be allowed to go to school, after examining of their bags;
- Allow for making copies of documents; if making copies may affect proceedings, this may be avoided;

# Section 69: Arrest



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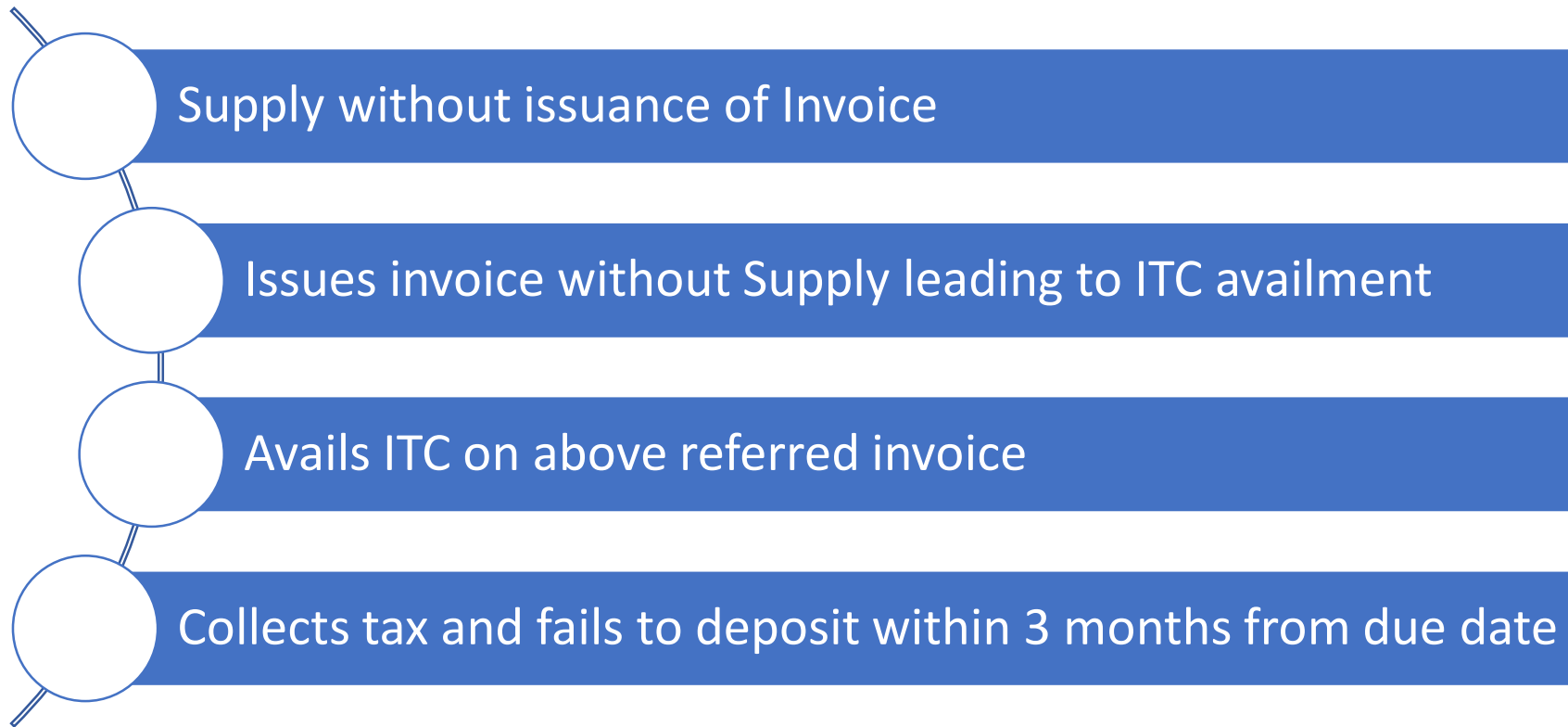




# Section 69: Arrest



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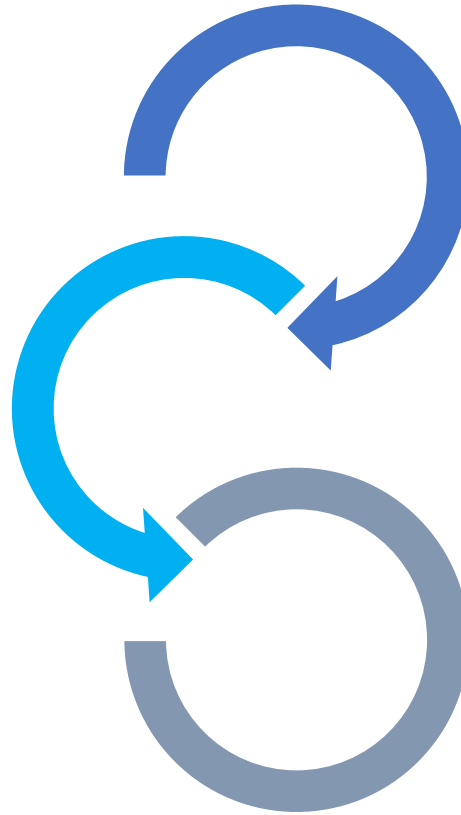
# Section 69: Arrest



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- **Tax exceeding Rs. 5 crore**
- [5 years Imprisonment & Fine]

- **Tax exceeding Rs. 2 crore**
- [3 years Imprisonment & Fine]

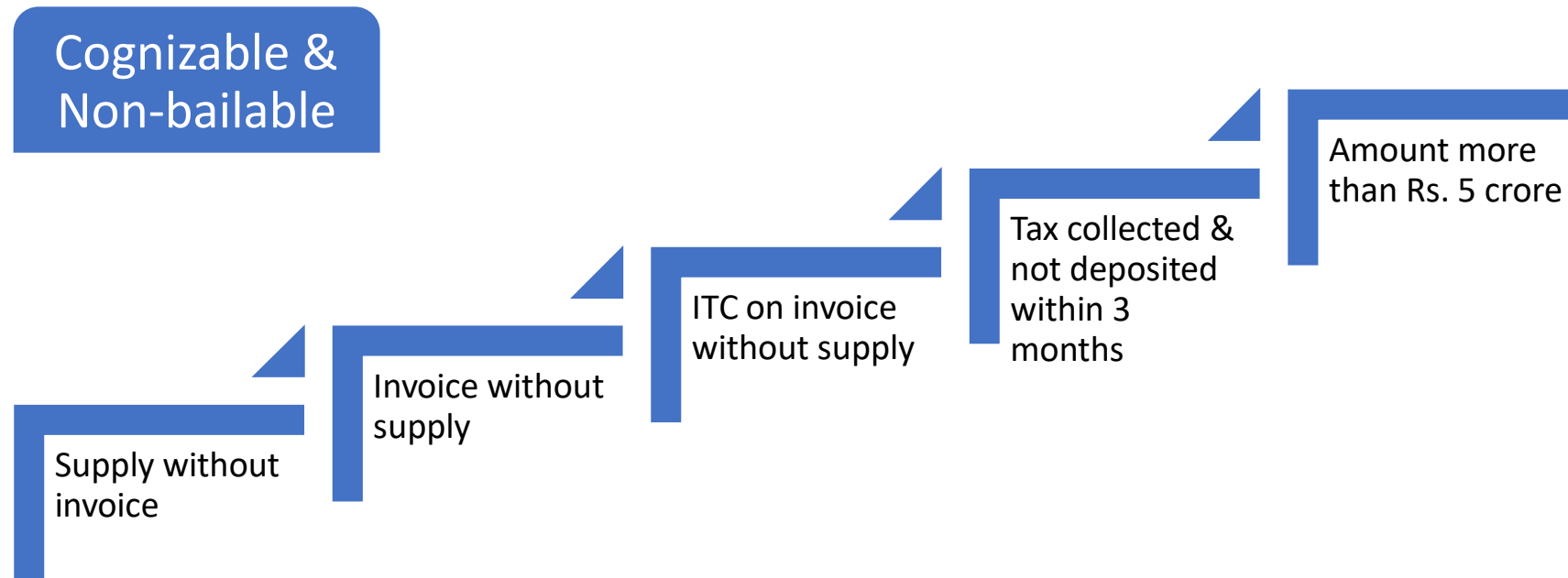


- **Repeat offence u/s 132**
- Short payment of tax
- Fraudulent Refund
- Falsifies accounts/ Furnish false information
- Deals with goods liable to confiscation
- Attempts/ Abets any offence
- [5 years Imprisonment & Fine]

# Section 69: Arrest



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# Section 69: Arrest



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## Arrest

- Cognizable Offence vs Non-Cognizable Offence
- Bailable vs Non-Bailable Offence
- Other than Cognizable offence [Rs. 5 crore] is Bailable. Default in Bail: Forward to Magistrate Custody
- Cognizable offence [Rs. 5 crore]: AC/ DC shall have powers as a Police officer under CrPC

# Code of Criminal Procedure [CrPC]



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## Arrest

- Section 41D: Right to meet Advocate
- Section 46: Actually touch or confine the body [unless there is submission by word/ action]
- Women to be arrested by female officer
- All means to arrest can be used in case of resistance
- Section 49: Restraint/ power to be used to avoid escape from arrest but not in excess

# Code of Criminal Procedure [CrPC]



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## Arrest

- Section 50: Informed about grounds of arrest and right of bail
- Section 50A: Obligation to inform about arrest to nominated person
- Section 56: Produce before Magistrate [*GST Commissioner not specified as Magistrate in case of arrest, unlike in case of Search*]
- Section 57: Not to be detained beyond 24 hours

## DEEP SURESH GADHECH [2020 (43) G.S.T.L. 641 (Guj.)]

- Petitioner had filed writ petition in the nature of '*Habeas Corpus*' for production of illegally arrested person;
- It was shown to the Court that the arrest was made by State tax Officer and was authorised by Joint Commissioner [officer below rank of Commissioner];
- Court observed that the Commissioner was authorised to order for arrest upon reasons to believe framed by the Commissioner;
- Court observed that the Commissioner had delegated the authority of arrest to Joint Commissioner;
- However, the Court held that the arrest can be proceeded only upon the Commissioner having reasons to believe which was absent;
- Hence, Court ordered that the arrest was illegal and arrested person was set free.

## DAULAT SAMIRMAL MEHTA [2021 (55) G.S.T.L. 264 (Bom.)]

- Petitioner was alleged to be involved in Fake Invoicing matters;
- Petitioner appeared before the tax authorities 5 times and produced information;
- The Court held that the general rule is 'Bail' and not 'Jail'
- The Court also observed that there is no concrete finding that why arrest is must;
- The Court held that mere reasons to believe of committing offence is not sufficient and the reason to believe as to why the person must be arrested.
- The Court also observe that Statement given by the petitioner during summons is relevant to prove the facts; however, the same is relevant in case of prosecution before Court. Hence, mere statement is not sufficient.



## P.V. RAMANA REDDY [2019 (25) G.S.T.L. 185 (Telangana)]

- Various Petitions were heard together by Telangana High Court;
- The petitioners were issued summons and were apprehension of arrest and filed writ petitions under Article 226;
- It was also observed that Section 438 of CrPC provides for Anticipatory Bail;
- Revenue challenged that writ petitions under Article 226 cannot be converted into petition for anticipatory bail;
- Court held that since there is no FIR under GST as in case of criminal proceedings, the petitioners can invoke Article 226 to seek protection from arrest, i.e., akin to Anticipatory Bail;
- It was also held that arrest can be made even before adjudication or assessment;

## ASHOK KUMAR [2020 (41) G.S.T.L. 311 (Bom.)]

- Husband and Wife were partners in firm wherein Husband was active partner and wife was dormant partner;
- The firm was alleged to be involved in fake invoicing which led to huge revenue loss;
- As per records, the firm had produced bogus documents and there was reasonable apprehension that bail may lead to distortion of evidence;
- The Court rejected Bail to the Husband who was active partner;
- The Court allowed bail to the Wife who was dormant partner;

## Agarwal Foundries Private Limited [2020 (11) TMI 269 - TEL HC]

- Facts appreciated by Court:
  - Late-night Summons [Summons issued at night to appear next day @ 00.30 am]
  - Medical Reports by Hospital
  - Police Complaint
- Physical Assault not permissible;
- Lawyer cannot be present during investigation; but can be present in visible range;
- Investigation of case by another official.

## Cognizable Offence = Arrest

- Article 21 of COI: Protection of Life and **Personal Liberty**
- Supreme Court in Siddharth [2022 (64) G.S.T.L. 34 (S.C.)] held that distinction must be made between 'power to arrest' and 'justification to exercise arrest'. Arrest would be justified if
  - Custodial investigation is necessary
  - Heinous Crime
  - Accused may abscond
  - Witness may be influenced

## Cognizable Offence & Arrest

- Following points to be examined prior to arrest:
  - Presence of credible information or reasonable suspicion justifies arrest;
  - Arrest required for proper investigation;
  - Tampering of evidence;
  - Intimidate or Influence of witness;
  - Person is master-mind of fake invoices, etc.;
  - Presence for investigation cannot be ensured without arrest;
  - *Mens rea* is palpable.

## Procedure – Pre-Arrest

- Arrest memo should indicate relevant provisions and grounds of arrest;
- Date and time of arrest and acknowledgement of arrest;
- Grounds of arrest must be explained to arrested person;
- Nominated person to be informed about arrest;
- Separate memo for separate persons;
- Mention of DIN;
- Women to be arrested by women officer;
- Medical examination of arrested person;

# CBIC Guidelines



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## Procedure – Pre-Arrest

- Reasonable care and safety of arrested person;
- No force unless required;
- No publicity;

## Procedure – Post-Arrest

- Arrested person should be allowed to talk to relatives/ nominated person;
- AC/ DC bound to release arrested person on Bail;
- One Surety of like amount by local person to good repute;
- Appearance before investigation officer and not to leave country;
- Bond/ Surety to be commensurate with the financial status;
- If bail conditions not fulfilled, produce the person before Magistrate within without delay and within 24 hours;



## Procedure – Post-Arrest

- In case of non-bailable offence, produce the arrested person before Magistrate within 24 hours;
- Hand-over the person to Police if person cannot be produced before Magistrate and produce person before Magistrate next day;
- File prosecution within 60 days, where bail is not granted; otherwise, file prosecution complaint within definite time frame;

# Section 70: Summons



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## Summons

- Proper officer can summon warranting attendance of person to give evidence or produce document or any other thing;
- Deemed as 'Judicial Proceedings' [i.e. proceeding in the course of which evidence is or may be legally taken on oath] for following judicial proceedings:
- Section 193 of IPC:
  - False evidence – punishable with imprisonment upto 7 years & fine
  - Fabricates false evidence – punishable with imprisonment upto 3 years & fine
- Section 228 of IPC: Intentional insult or interruption to public servant

# Section 136: Summons



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## Relevancy of Statements

- Statement made and signed in response to summons is relevant for proving the truth of the facts in any prosecution:
  - Dead/ unfound/ not capable to give evidence/ kept away/ presence cannot be obtained without unreasonable delay or expense; - which the Court considers reasonable
  - Person is examined as witness before Court – Court admits statement as evidence
- Can Statement be retracted?
- Cross-Examination of Witness?
- Question of Law?

# Section 83: Provisional Attachment



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## Provisional Attachment

- Initiation of Proceeding under:
  - Chapter XII [Assessment, Scrutiny]
  - Chapter XIV [Inspection, Search, Seizure & Arrest]
  - Chapter XV [Demand & Recovery]
- Commissioner is of the opinion
- Protect the interest of revenue
- Provisionally Attached [including Bank Account]
- Life of provisional Attachment – 1 year

# Strategies during Investigation



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- Assess or evaluate implications of offence the investigating officer is trying to establish.
- For example, examine whether offence is cognizable, non-cognizable, bailable or non-bailable OR it is resulting into very high demand OR it has recurring and side effect
- Who should attend the Summon
- Who can accompany the officials
- Implications of non-appearance
- Role of the Consultant
- Conceptualize the likely questions and response
- Right to seek transfer of investigation from one location to another or seeking the opportunity to have virtual meeting

# Strategies during Investigation



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- When to club the investigation at one place or when to keep it separate if initiated at multiple places or by multiple agencies
- Clarity of strong or weak evidence is very important
- Do not rush to submit any document as it forms the basis for future litigation
- Keep copies of all the submissions made
- Taking timely objection to certain procedural irregularities committed by the Tax official is important
- Weigh the option of paying the tax or challenging the action in the court or opting for the both
- The amount paid during investigation is deemed as the payment under protest
- Always communicate in writing with the officials to create history of the investigation and minutes the discussion
- When to apply or not to apply for anticipatory bail

# Strategies during Investigation



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- Clarity about the rights of the Assessee
  - Right to seek the representation
  - Copy of the statement
  - Rights against physical assault
  - Rights and obligation of the directors or Key Managerial Personnel
  - Right to retract the statement
  - Right to seek cross-examination of the statement
- Weigh the options of changing the structure or tax position of the future transaction immediately or on completion of the investigation or not to change

# Strategies during Investigation



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- Evidence to prove innocence or prudence
  - Past track record
  - Reliance on the expert opinion on technical matters
  - Reliance on the Legal Opinion on interpretation matters



# Best Practices



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- Cooperate with the Tax Authorities
- Attend summons/ Seek genuine adjournment
- Do not delete/ dispose-off data
- Provide correct information/ Do not mislead
- Explain facts/ Avoid interpretation
- Refrain to comment on what is not known
- Sign only true Statement
- Extension for SCN reply

# Potential Defences for Assessee



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- Jurisdiction
  - Who can issue what kind of notice
  - Excessive delegation or no delegation
  - Monetary limit to issue the SCN
  - Duplication of the State or Central Jurisdiction
- Reasons to believe
- Merit of the allegations- Onus to prove?
- Limitation period
- Natural Justice
- Seeking refund of illegal extortion of the amount
- Suit in case of illegal detention



THANK YOU !