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[Training Material for Departmental Use]

E-BOOK



SEARCH, SEIZURE

&

ARREST

[CENTRAL EXCISE, CUSTOMS & SERVICE TAX]

Search, Seizure & Arrest

Note:

1. In this E-book, attempts have been made to provide the provisions regarding *search, seizure and arrest under Central Excise, Customs and Service Tax laws* at one place. It is expected that it will help departmental officers in their day to day work.
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INDEX

1. INTRODUCTION 1

2. SEARCH..... 1

 Search of a person:.....2

 Search of a Vehicle:2

 Search of premises:3

3. EXPLANATION OF THE TERMS 4

 (I) ‘Reason to Believe’ or ‘Reasonable Belief’:.....4

 (II) ‘Liable to Confiscation’:.....5

 Provisions under Central Excise: 5

 Provisions under Customs: 6

 Confiscation of other goods / vehicles: 8

 (III) ‘Document’9

 (IV) ‘Secreted’:.....9

 Search Warrant:9

 Procedure for conducting search:10

 Basic Parameters of Search:12

 Vitiation of Search:13

4. CHECK LIST..... 13

 For search of a factory.....13

 For Search of Office Premises14

 For Search of Residential Premises.....15

5. SEIZURE 15

 Distinction in law between ‘Seizure’ and ‘Detention’:16

6. ARREST 17

 Necessity of assuming control over person:18

7. Precautions to be taken during arrest 20

8. Post arrest formalities 20

9. Guidelines for Arrest and Bail 21

10. List of Important Notifications/Circulars/Instructions: (For Details-See E-Book NO.02) 24

11. Formats related with Search, Seizure & Arrest: (For Details-See E-Book NO.03) 26

SEARCH, SEIZURE AND ARREST

[CENTRAL EXCISE, CUSTOMS & SERVICE TAX]

1. INTRODUCTION

The officers of Customs & Central Excise are supposed to know the provisions of so many Acts/Rules for performing their duties effectively and efficiently. The search, seizure and arrest are the most important functions, amongst others, performed by the officers. These functions require specialized knowledge of law and procedure. Sometimes, due to lack of knowledge some error of law and/or procedure is committed by the officer during conduct of search followed by seizure, arrest etc., which becomes fatal for the department's case when it comes to judicial scrutiny. In this E-book an attempt has been made to provide 'At a Glance' view of the provisions regarding search, seizure and arrest under Central Excise, Customs and Service Tax laws. It is expected that it will help the departmental officers in making foolproof case against the tax evaders / smugglers etc.

2. SEARCH

The word 'SEARCH' has not been defined in law. However, as per Black's Law dictionary search is "*An examination of a man's house or other buildings or premises, or of his person, with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged.*" As per law dictionary and as noted down 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. There are separate set of provisions regarding search under Central Excise, Customs and Service Tax.

Search of a person:

Search of a person is conducted by or in presence of the officer empowered under the law. It is also called personal search of a person. Provisions of personal search under Central Excise, Customs and Service Tax laws are tabulated as under:

TABLE-1

	Authority	Officer authorized to take search	Remarks
Central Excise	NIL	N.A.	
Service Tax	NIL	N.A.	
Customs	Section 100 of Customs Act, 1962	‘Proper Officer’ as defined under Section 2(34) of Customs Act, 1962. ‘Proper Officer’ has been notified vide Notification No. 40/2012-Cus(NT) dated 02.05.2012. The officer of and above the rank of Inspector of Customs & Central Excise, Preventive Officer, Examining Officer, Intelligence Officer of DRI & DGCEI is authorized to search the suspected persons entering or leaving India under Section 100 of Customs Act, 1962.]	<ul style="list-style-type: none">▪ Procedure for personal search has been prescribed under section 102 of Customs Act.▪ The suspected person can be X-Rayed in case there is reason to believe that goods liable to confiscation are secreted inside his/her body. [See section 103]

Note: It is to be noted here that provisions of certain sections (whole or part) of the Customs Act, 1962 like section 105, 110, 115, 118, 119, 120, 121, 124, 142 and 150 have been made applicable in Central Excise matters by virtue of Notification No. 68/63-C.E. dated 04.05.1963, as amended, issued under section 12 of Central Excise Act, 1944 but provisions of Section 100, 101, 102 and 103 of Customs Act, 1962 have **not** been made applicable in Central Excise & Service Tax matters.

Search of a Vehicle:

Search of a vehicle on road is conducted by or in presence of the officer empowered under the law. It is also called transit checks. Provisions of search of a vehicle under Central Excise, Customs and Service Tax laws are tabulated as under:

Search, Seizure & Arrest

TABLE-2

	Authority	Officer authorized to take search	Remarks
Central Excise	Rule 23 of Central Excise Rules, 2002	Any Central Excise Officer as defined under Section 2(b) of Central Excise Act, 1944	There should be ' <i>reasonable belief</i> '* that the goods are being carried with the intention of evading duty.
Service Tax	NIL	N.A.	
Customs	Section 106 of the Customs Act, 1962	'Proper Officer' as defined under Section 2(34) of Customs Act, 1962. 'Proper Officer' has been notified vide Notification No. 40/2012-Cus(NT) dated 02.05.2012. The officer of and above the rank of Inspector of Customs & Central Excise, Preventive Officer, Examining Officer, Intelligence Officer of DRI & DGCEI is authorized to stop and search the vehicle under Section 106 of Customs Act, 1962.]	<ul style="list-style-type: none"> ▪ There should be '<i>reasonable belief</i>'* that the smuggled goods are being carried. ▪ Under section 106 vehicle, animal, aircraft and vessel in India or within Indian Customs Waters can be forcibly stopped and searched/rummaged. ▪ Locks of any door or package can be broken for conducting search and examination under section 106(1)(c). ▪ Vehicle, Vessel, Aircraft and Animal can be fired upon for forcibly stopping as per procedure prescribed in section 106 of Customs Act, 1962.

* '*Reasonable Belief*' is explained later on in this e-book.

Search of premises:

Search of a person and a vehicle on road is conducted by or in presence of the officer empowered under the law. But, the search of premises is conducted by an officer authorized to do so through a written authority letter normally called a 'Search Warrant' issued by a competent authority. Provisions of search of premises under Central Excise, Customs and Service Tax laws are tabulated as under:-

TABLE-3

	Authority	Officer authorized to issue search warrant	Remarks
Central Excise (Registered Premises)	Rule 22 of Central Excise Rules, 2002	An officer empowered by the Principal Commissioner or Commissioner of Central Excise to exercise the power under Rule 22 of Central Excise Rules, 2002.	Generally an officer of the rank of Inspector and above has been notified under said Rule 22(1). However, the Notification issued by the jurisdictional

Search, Seizure & Arrest

			Principal Commissioner or Commissioner may be seen in this regard.
Central Excise (Unregistered Premises)	1. Section 12F of Central Excise Act, 1944. 2. Section 105 of Customs Act, 1962 as applicable by virtue of Notification No. 68/63-C.E. dated 04.05.1963, as amended, issued under section 12 of Central Excise Act, 1944.	1. Additional Commissioner or joint Commissioner of Central Excise. 2. Assistant / Deputy Commissioner.	<ul style="list-style-type: none"> ▪ Authority to search cannot be issued to an officer not below the rank of Inspector. ▪ There should be '<i>reasonable belief</i>'* that the goods '<i>liable to confiscation</i>'* or <i>documents</i>*/things useful for or relevant to any proceeding under Central Excise provisions are <i>secreted</i>* in that place.
Service Tax	Section 82 of Finance Act, 1994	The officer authorized by Joint Commissioner or Additional Commissioner or any other Central Excise Officer notified by the Board.	<ul style="list-style-type: none"> ▪ There should be '<i>reasonable belief</i>' that any documents or things useful for or relevant to any proceeding under Service Tax provisions are <i>secreted</i> in that place.
Customs	Section 105 of the Customs Act, 1962	The officer authorized by the 'Assistant/ Deputy Commissioner of Customs or an officer of Customs specially empowered by name by the Board in any area adjoining the land frontier/ coast of India.	<ul style="list-style-type: none"> ▪ There should be '<i>reasonable belief</i>' that the goods '<i>liable to confiscation</i>' or any <i>documents</i> or things useful for or relevant to any proceeding under Customs provisions are <i>secreted</i> in that place.

* '*Reasonable Belief*', '*liable to confiscation*', '*documents*' and '*secreted*' are explained later on in this e-book.

3. ***EXPLANATION OF THE TERMS***

(I) **'Reason to Believe' or 'Reasonable Belief':**

One of the essential conditions to be satisfied before authorizing/conducting the search in respect of all the provisions pertaining to Central Excise, Service Tax and Customs is '*reason to believe*'. 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.” The word ‘believe’ is much stronger than the word ‘suspect’. A belief in the existence of a thing requires a more solid foundation than in the case of a mere suspicion. ‘Reason 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. Although the officer is not required to state the reasons for such belief before issuing an authorization for search, he has to disclose the material on which his belief was formed.

‘Reason to believe’ need not be recorded invariably in each case. However, it would be better if the materials / information etc. are recorded before issue of search warrant or before conducting search. In case the authorizing officer’s satisfaction of reasonable belief is questioned in any collateral proceedings, only then he has to produce relevant evidence which formed the basis of his belief. Generally, courts do not go into the question of sufficiency of material to form such belief. The existence of such material is considered sufficient. Only in those cases where seizure is unreasonable and perverse and that no reasonable person could have reached that conclusion, procedures become unauthorized.

(II) **‘Liable to Confiscation’:**

This term has been used in Central Excise and Customs provisions only.

Provisions under Central Excise:

In Central Excise the conditions under which **goods** become liable to confiscation are provided in Rule 25 of the Central Excise Rules, 2002 and Rule 15 of the CENVAT Credit Rules, 2004.

As per Rule 25 of Central Excise Rules, 2002, goods become liable to confiscation when any producer, manufacturer, registered person of a warehouse or a registered dealer,-

- (a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or
- (b) does not account for any excisable goods produced or manufactured or stored by him; or
- (c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or
- (d) contravenes any of the provisions of these rules or the notifications issued there under with intent to evade payment of duty.

As per Rule 15 of the CENVAT Credit Rules, 2004 if any person, takes or utilizes CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any provisions of these rules, then, all such goods shall be liable to confiscation.

Provisions under Customs:

In Customs the conditions under which **imported goods** become liable to confiscation are provided in section 111 of Customs Act, 1962 and the conditions under which the **goods attempted to be improperly exported** become liable to confiscation are provided in section 113 of Customs Act, 1962.

SECTION 111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation:—

- (a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;
- (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;
- (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;
- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;
- (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;
- (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;
- (n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;
- (p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

SECTION 113. Confiscation of goods attempted to be improperly exported, etc.

The following export goods shall be liable to confiscation:-

- (a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;
- (b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the export of such goods;

- (c) any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;
- (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;
- (f) any goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;
- (g) any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;
- (h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
 - (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;
 - (ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;
- (j) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under section 74;
- (k) any goods cleared for exportation which are not loaded for exportation on account of any willful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;
- (l) any specified goods in relation to which any provisions of Chapter IVB or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

Confiscation of other goods / vehicles:

Besides the above, other goods / vehicles are also liable to confiscation in certain conditions in Central Excise and Customs matters. The provisions of Customs Act are

applicable in Central Excise matters also in these cases. Provisions for confiscation of other than excisable/smuggled goods are tabulated as under:

Sl. No.	Items	Provision of confiscation
1	vehicle used for transporting the offending goods	Section 115 of Customs Act, 1962
2	packages in which the offending goods are packed	Section 118 of Customs Act, 1962
3	goods used to conceal offending goods	Section 119 of Customs Act, 1962
4	offending goods in changed form	Section 120 of Customs Act, 1962
5	sale proceeds of offending goods	Section 121 of Customs Act, 1962

(III) 'Document':

Generally, the term 'document' shall include any matter written or expressed or described upon any substance. Therefore, it will include accounts books in written, typed or printed or a paper on which markings are made. In recent times, courts have recognized computer print outs and storage devices like floppies as documents which can be relied upon as evidence. Further, section 36B of the Central Excise Act/Section 138C of Customs Act, 1962 envisages admissibility of micro-films, facsimile copy of document and computer print-outs as documents.

The word 'document' has acquired a much wider meaning under the information Technology Act, 2000. Section 4 of the Information Technology Act legally recognizes any information in an electronic form which is accessible so as to be usable for a subsequent reference. The Digital Signatures, Electronic Records etc. have also been legally recognized in Chapter III dealing with Electronic Governance in the Information Technology Act, 2000.

(IV) 'Secreted':

The word 'Secreted' means documents which are kept with a view to conceal/hide them. It will even mean documents or things which are likely to be secreted. Thus, what can be called from an assessee in normal course should not be recovered from him under search proceedings.

Search Warrant:

The authority to conduct search is generally called search warrant. It is issued by a competent authority empowered under respective laws, as mentioned in above Tables. Search Warrant should contain following details.

Contents Of Search Warrant:

A search warrant must indicate the existence of a reasonable belief leading to the search. The usual details which a search warrant should have are:-

- (a) the violation under the Act,
- (b) the premise to be searched,
- (c) the name & designation of the person authorized for search,
- (d) the name of the issuing officer with full designation,
- (e) date and place of issue,
- (f) serial number of the search warrant,
- (g) period of validity i.e. a day or two days etc.

Procedure for conducting search:

Section 18 of the Central Excise Act, 1944, section 82(2) of Finance Act, 1994 and section 105(2) of Customs Act, 1962 prescribe the procedure for searches. In all these provisions, it has been prescribed that searches be carried out in accordance with the provisions of Code of Criminal Procedure, 1973 (Act 2 of 1974). Section **100** of the Code of Criminal Procedure describes the procedure for search as below:-

- (1) Whenever any place liable to search or inspection under this Chapter, is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.
- (2) If ingress into such place cannot be so obtained, the officer or other persons executing the warrant may proceed in the manner provided by sub-section (2) of section 47.
- (3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.
- (4) Before making a search under this Chapter, the officer or other person about to made it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or any other locality, if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

- (5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the court as a witness of the search unless specially summoned by it.
- (6) The occupant of the place searched, or some person in his behalf shall, in every instance be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.
- (7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.
- (8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860)

Sub-section 2 above of section 100 makes a reference to section 47(2) of Cr. PC which provides for forceful entry. Section 47(2) of Cr. PC reads as under:

If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Basic Parameters of 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 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 the 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 in-charge/owner of the premises being searched under acknowledgement.

Vitiating of Search:

Search without a valid search warrant (i.e. issued by other than a competent authority) results in an illegal search without authority of law. However, due to this reason, the accused cannot get benefit. Accordingly, evidence collected even during an illegal search and seizure is considered admissible in trial and adjudication proceedings.

4. **CHECK LIST**

For search of a factory

- i. Check whether the installed capacity is in accordance with the industrial licence and whether it tallies with the particulars mentioned in the industrial licence as well as the Central Excise Registration Certificate.
- ii. In respect of imported plant and machinery, verify whether proper import duty payment documents are available in the factory and that the machinery installed tallies with such documents.
- iii. If a stock verification is being carried out, verify in respect of excise bonded store room, the customs bonded warehouse, if any, whether the goods in such store room or bonded warehouse tally with the records.
- iv. Check whether the production figures given to the Govt. departments are correct with reference to records like daily production reports, quality control reports, electricity consumption bills, raw material consumption data and subsidiary documentation maintained in each Dept. of the factory. Attempt wherever possible on input – output analysis and assess the production on that basis...
- v. Check internal records relating to raw material issued and consumption in order to make an estimation of actual production.
- vi. Check factory records/correspondence such as daily production figures sent by the production department of the factory to their office etc. in order to establish whether the production figures have been correctly reflected in the records maintained for Central Excise purpose.
- vii. Check records relating to the composition of product such as laboratory records, formulation reports etc., to ascertain whether these tally with the declaration made to the Government, particularly in respect of goods

- exported under claim for drawback or in respect of which exemption claimed are dependent upon their chemical composition.
- viii. Check the factory's invoices and transport bills/challans to estimate the quantity of clearances as well as receipts of raw material. Check whether clearances estimated on this basis tally with the declaration / return filed by the assessee with the Central Excise department.
 - ix. Check the register / records maintained at the factory / security gate in respect of trucks entering/leaving the factory with or without goods. Check whether these records tally with the invoices issued by the factory in order to establish clandestine clearance of goods without payment of duty. Look for private gate passes / slips relating to truck movement.
 - x. Look for private records which are sometime inadvertently kept in drawers / almira's of Production Manager/Shipping dept. which indicate the actual production and clearance figures.
 - xi. In respect of a Unit utilizing raw material / other inputs imported as an actual use, check with reference to the raw material accounts, the actual receipt of such imported material in to the factory and its utilization thereof.

For Search of Office Premises

- i. Check Balance Sheets / Audited Statements of Accounts.
- ii. Check returns submitted to different agencies such as financial institutions, Banks, Department of Industrial development, Director of Industries or other statutory bodies, etc. relating to production and turn over and compare with documents/returns filed with the Central Excise department.
- iii. Take over any documents relating to import of equipment/raw material which appears to be in the nature of private correspondence or private note and which are not placed in the relevant files and which are not accounted for in the records maintained in the normal course of business.
- iv. Take over any correspondence with suppliers relating to matters of description of valuation of imported goods which suggests some kind of an underhand arrangement. Similar action has to be taken in respect of export goods also.
- v. Check internal company records relating to production, sale, etc. intended for utilization within the company.
- vi. Check correspondence with dealer/distributors regarding marketing patterns, commissions, deposits, etc. Also check accounts relevant to such deposits

- received from dealers and others and commission paid to them. Also check whether there is any flow back from the distributors / dealers to the company.
- vii. Check internal company records relating to question of classification / valuation, etc., including correspondence with or advice tendered by their counsels, etc.
 - viii. Scrutinize any application for an import licence, claim for Drawback or cash compensatory support, duty-free REP licence, etc.
 - ix. Check in-coming and out-going telex messages relating to imports, exports, prohibition, payments, pricing and sale.
 - x. Check documents / letters relating to imports and export of goods particularly such documents as are not found in the relevant file and appear to be more in the nature of private correspondence.

For Search of Residential Premises

- i. Check any documents or letter pertaining to private correspondence relating to import and export of goods. Also take over documents such as blank invoices of foreign suppliers and material such as rubber stamps of such Suppliers.
- ii. Take over the address and telephone diary and also telephone bills particularly those containing trunk calls.
- iii. Take over used airlines and train tickets, bills, bills of purchase of petrol etc. Which would help to establish the location of a person or a vehicle on a particular date and time?
- iv. Scrutinise passport and other travel documents to establish the location of a person on a particular date.

5. SEIZURE

Seizure of goods and documents are made under Customs and Central Excise provisions but in Service Tax only documents are often seized. The term 'seizure' has not been defined in the respective laws of Central Excise, Customs and Service Tax. 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. It may not always be synonymous

Search, Seizure & Arrest

with manual detention or physical retention. It may happen that physical removal of goods is not possible then also it can be seized by the department by giving notice to that effect to the owner or who has the possession of goods. The ownership of seized goods is suspended till finalisation of the adjudication proceedings. If it is confiscated by an order issued by a competent authority which attains finality then only the ownership transferred to the Government. If it is not confiscated then the ownership again transferred to the original owner of the goods.

Distinction in law between 'Seizure' and 'Detention':

Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. The purpose of detention is to prevent that property being removed or used by the owner of the property or the person who possesses the property for some time. In detention the possession of the property is not taken away by the department but in seizure the possession is transferred from the owner to the department. The detention order is served when it is not practicable to seize the goods at that particular point of time. Secondly, when it is suspected that the goods are liable to confiscation then detention order is issued. As soon as the 'suspicion' is converted into 'reasonable belief' after enquiry/ investigation the detained goods are formally seized because seizure can be made only on the basis of 'reasonable belief' that the goods are liable to confiscation. Taking possession by the department is necessary condition of seizure. During the period of seizure the ownership of the seized goods is suspended till finalisation of the adjudication proceedings. It is to be noted here that no confiscation can be ordered without seizure. Provisions of seizure under Central Excise, Customs and Service Tax laws are tabulated as under: -

TABLE - 4

	Authority	Officer authorized to take search	Remarks
Central Excise [seizure of excisable goods outside factory premises]	Rule 24 of Central Excise Rules, 2002	Any Central Excise Officer as defined under Section 2(b) of Central Excise Act, 1944	There should be ' <i>reasonable belief</i> '* that the goods have been removed with the intention of evading the duty payable thereon or no duty has been paid thereon.
Central Excise [Seizure of excisable goods within the factory premises, seizure of	Section 110 of Customs Act, 1962 as applicable by virtue of Notification No. 68/63-C.E.	As per Notification No. 40/2012-Cus(NT) dated 02.05.2012 the officer of and above the rank of Inspector of Customs & Central Excise, Preventive Officer,	▪ SCN proposing confiscation must be issued within six months from the date of seizure otherwise the goods shall be returned to the owner in terms of Section 110(2) of Customs Act.

Search, Seizure & Arrest

vehicle or any other non-excisable goods or documents etc.]	dated 04.05.1963, as amended, issued under section 12 of Central Excise Act, 1944.	Examining Officer, Intelligence Officer of DRI & DGCEI.	<ul style="list-style-type: none"> ▪ In case the seized goods are perishable or hazardous in nature, constraints of storage facility or depreciation in value of goods the same should be disposed of in terms of Section 110(1A)/(1B)/(1C) of Customs Act.
Service Tax	Section 82 of Finance Act, 1994.	The officer authorized by Joint Commissioner or Additional Commissioner or any other Central Excise Officer notified by the Board.	<ul style="list-style-type: none"> ▪ There should be '<i>reasonable belief</i>' that the documents or things are useful for or relevant to any proceeding under Service Tax provisions.
Customs	Section 110 of the Customs Act, 1962	'Proper Officer', as defined under Section 2(34) of Customs Act, 1962. 'Proper Officer' has been notified vide Notification No. 40/2012-Cus(NT) dated 02.05.2012. The officer of and above the rank of Inspector of Customs & Central Excise, Preventive Officer, Examining Officer, Intelligence Officer of DRI & DGCEI is authorized to seize the documents/things/vehicles under Section 110 of Customs Act, 1962.	<ul style="list-style-type: none"> ▪ There should be '<i>reasonable belief</i>'* that the smuggled goods/vehicles etc. are liable to confiscation. ▪ SCN proposing confiscation must be issued within six months from the date of seizure otherwise the goods shall be returned to the owner in terms of Section 110(2) of Customs Act. ▪ In case the seized goods are perishable or hazardous in nature, constraints of storage facility or depreciation in value of goods the same should be disposed of in terms of Section 110(1A)/(1B)/(1C) of Customs Act.

** 'Reasonable belief' has been explained above.*

Note:

- Before disposal of seized/confiscated goods, a notice should be given to the owner of goods in terms of Section 150 of Customs Act, 1962. In this connection Instruction issued under M.F.(D.R.) Letter F. No. 711/4/2006-Cus(AS) dated 14.02.2006 may be referred.
- Guidelines for provisional release of seized export goods has been issued under M.F.(D.R.) Circular No. 01/2011-Cus, dated 04.01.2011.

6. ARREST

The term 'arrest' has not been defined. However, as per judicial pronouncements it denotes 'the taking into custody of a person under some 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. Article-22 of the Constitution of India deals with protection against arrest and detention in certain cases.

Necessity of assuming control over person:

To constitute an arrest it is necessary that the officers should assume custody and control over the person, either by force or with his consent, and it has been held that neither the utterance of words indicating an intention to arrest on the part of the person uttering them, nor the reading of the warrant is of itself sufficient. Provisions of arrest under Central Excise, Customs and Service Tax laws are tabulated as under:

TABLE – 5

	Authority	Officer authorized to make arrest	Remarks
Central Excise	Section 13 of Central Excise Act, 1944. [Notification No. 9/99-CE(N.T.) dated 10.02.1999, as amended, specifies proper officer under Section 13. Though the Notification has not been rescinded it has become redundant and inapplicable because the Act itself prescribes the officer authorized to make arrest.]	Any Central Excise Officer not below the rank of Inspector of Central Excise with prior approval of Principal Commissioner / Commissioner. [As per Notification No. 9/99-CE (NT) officer not below the rank of A.C./D.C. and officer below the rank of AC/DC, if authorized in writing by AC/DC or any superior officer can exercise power under Section 13.]	<ul style="list-style-type: none"> ▪ The arresting officer should have ‘<i>reasonable belief</i>’* that the person is liable to punishment under CEA, 1944 or the Rules made thereunder. ▪ Arrest can only be made U/S 13 with prior approval of Principal Commissioner /Commissioner. ▪ For detailed guidelines regarding arrest under Central Excise for non-bailable /bailable offences Circular No.974/08/2013-CX dated 17.09.13 may be seen. ▪ Monetary Limit for arrest has been enhanced to Rs.1 Crore (Rupees One Crore) and above vide circular no.1010/17/2015-CX dated 23.10.2015
Service Tax	Section 91 of Finance Act, 1994.	The officer not below the rank of Superintendent duly authorized by the Principal Commissioner or Commissioner of Central Excise by general or special order.	<ul style="list-style-type: none"> ▪ The Principal Commissioner or Commissioner of Central Excise should have ‘<i>reasonable belief</i>’ that the person has committed an offence specified in Section 89(1)(i) & (ii) of

Search, Seizure & Arrest

			<p>Finance Act, 1994.</p> <ul style="list-style-type: none"> ▪ For arresting a person evasion should be exceeding Rs. 50 Lakh. ▪ Before making arrest Circular No. 140/9/2011-ST dated 12.06.2011 may be perused. ▪ For procedure of arrest Circular No. 171/6/2013-ST dated 17.09.2013 may be seen. ▪ Monetary Limit for arrest has been enhanced to Rs.1 Crore (Rupees One Crore) and above vide circular no.1010/17/2015-CX dated 23.10.2015
Customs	Section 104 of the Customs Act, 1962	An officer empowered in this behalf by general or special order of the Principal Commissioner or Commissioner of Customs.	<ul style="list-style-type: none"> ▪ The officer authorized in this behalf should have '<i>reasonable belief</i>' that the person has committed an offence punishable under Section 132 or 133 or 135 or 135A or 136 of Customs Act, 1962. ▪ Monetary limit for arrest: <ul style="list-style-type: none"> (i) In case mis-declaration of value in order to evade duty etc. the value of such goods should exceed Rs. One Crore. (ii) In case of smuggled goods the duty involved should exceed Rs. 50 Lakh. (iii) In case of fraudulent availment or attempt of drawback or exemption exceeding Rs. 50 Lakh. ▪ Guidelines for arrest has been given under Instruction No. 394/71/97-Cus(AS) dt. 22.06.1999 and Circular No. 38/2013-Cus dated 17.09.2013. ▪ Monetary Limit for arrest under Customs Act has been revised vide Circular No.28/2015-Customs dated 23.10.2015.

7. *Precautions to be taken during arrest*

- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrest and the procedure thereof must be adhered to. It is therefore advised that the Commissioner should ensure that all officers are fully familiar with the provisions of the Code of Criminal Procedure 1973 (2 of 1974).
- There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in *D.K. Basu v. State of West Bengal* reported in 1997 (1) SCC 416. The arrest memo should include :
 - brief facts of the case;
 - details of the person arrested;
 - gist of evidence against the person;
 - relevant section(s) of the Finance Act, 1994 / Central Excise Act, 1944 / Customs Act, 1962 or other laws attracted to the case and to the arrested person;
 - the grounds of arrest must be explained to the arrested person and this fact noted in the arrest memo;
 - a nominated person (as per the details provided by arrested person) of the arrested person should be informed immediately and this fact also may be mentioned in the arrest memo;
 - the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to the person arrested under proper acknowledgment;
 - a separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event that there are several arrests in a single case.
- Further there are certain modalities that should be complied with at the time of arrest and pursuant to an arrest, which include the following :
 - A female should be arrested by or in the presence of a woman officer;
 - Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Governments and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.
- It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.

8. *Post arrest formalities*

- The procedure is separately outlined for the different categories viz. bailable / non-cognizable and non-bailable / cognizable offences. (Please see Table-6)

- In cases falling under the category of bailable / non-cognizable offence, the arresting officer is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also informed on telephone to the nominated person of the person(s) arrested. The arrested person should be also allowed to talk to a nominated person. The conditions will relate to, *inter alia*, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and security will depend, *inter alia*, on the amount of tax involved.
- If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four (24) hours of arrest. The arrested person may be handed over to the nearest police station for his safe custody, within 24 hours, during the night under a challan, before he is produced before the Court.
- In cases falling under the category of non-bailable / cognizable offence and only in the event of circumstances preventing the production of the arrested person before a Magistrate without unnecessary delay, the arrested person may be handed over to nearest Police Station for his safe custody, within 24 hours, under a proper challan, and produced before the Magistrate on the next day, and the nominated person of the arrested person may be also informed accordingly.
- Formats of the relevant documentation i.e. the Bail Offer Letter, the Bail Bond and the Challan for handing over to the police, in the Code of Criminal Procedure, 1973 (2 of 1974) may be followed.
- Every Commissionerate should maintain a Bail Register which will have the details of the case, arrested person, bail amount, surety amount. The money/instruments/documents received as surety should be kept in safe custody. The money should be deposited in the treasury. The other instruments/documents should be kept in the custody of a single nominated officer. It should be ensured that the instruments/documents received as surety are kept valid till the bail is discharged.

9. ***Guidelines for Arrest and Bail***

Following circulars have been issued on the Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962/ Finance Act, 1944 and Central Excise Act, 1944 respectively.

1. Circular No. 974/08/2013-CX Dated 17.09.2013
2. Circular No.171/6/2013-Service Tax Dated 17.09.2013
3. Circular No.38/2013-Cus Dated 17.09.2013
4. Circular No.1010/17/2015-CX dated 23.10.2015
5. Circular No.28/2015-Customs dated 23.10.2015

Search, Seizure & Arrest

Salient features of these circulars are tabulated below:-

TABLE – 6

Central Excise Act,1944	Finance Act, 1994	Customs Act, 1962	
Section 9, 9A(1A) & 13	Section 89, 90 & 91	Section 104, 132, 133, 135, & 135A	
Type of offence	CE	ST	Customs
Bailable and non-cognizable	All offences punishable under section 9 of Central Excise Act are non-cognizable and bailable except the offences relating to excisable goods where the duty leviable thereon exceeds fifty lakhs rupees and punishable under clause (b) or clause(bbbb) of Section 9(1) of the Central Excise Act.	Offences under section 89 (1) (i), (iii) and (iv) such as (a) where a person knowingly evades the payment of service tax, or (b) avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules, or, 3 maintains false books of accounts or fails to supply any information which he is required to supply or supplies false information, and <u>the amount of service tax involved is more than fifty lakh rupees.</u>	Offences punishable under Section 132, 133, 135 (1) (ii) & 135A of the Customs Act, 1962.
Non-bailable and cognizable	Offences under section 9A (1A) - The offences relating to excisable goods where the duty leviable thereon under this Act exceeds fifty lakh rupees and punishable under clause (b) or clause (bbbb) of sub-section (1) of section 9, shall be cognizable and non-bailable. These	Offences under section 89 (1)(ii) i.e. collects any amount of service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due and the amount so collected exceeds fifty	Offences punishable under section 135 (1) (i) & 135 (2) of the Act i.e. offences relating to: (a) evasion or attempted evasion of duty exceeding fifty lakh rupees ; or (b) prohibited goods notified under section 11 of the Customs Act, 1962 (as amended) which are also notified under sub-

Search, Seizure & Arrest

	<p>offences include the evasion of the payment of any duty (exceeding rupees 50 lakhs) payable under this Act and whoever contravenes any of the provisions of this Act or the rules made there under in relation to credit of any duty (exceeding rupees 50 lakhs) allowed to be utilized towards payment of excise duty on final product</p>	<p>lakh rupees.</p>	<p>clause (C) of clause (i) of sub-section (1) of section 135 of the Customs Act, 1962 (as amended); or</p> <p>(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or</p> <p>(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees.</p>
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Decision to arrest needs to be taken on case-to-case basis considering various factors, such as, nature & gravity of offence, quantum of duty evaded or credit wrongfully availed, nature & quality of evidence, possibility of evidences being tampered with or witnesses being influenced, cooperation with the investigation, etc. To summarize, power to arrest has to be exercised after careful consideration of the facts of the case which may include:

- (i) to ensure proper investigation of the offence;
- (ii) to prevent such person from absconding;
- (iii) cases involving organised smuggling of goods or evasion of customs duty by way of concealment;
- (iv) master minds or key operators effecting proxy/benami imports/exports in the name of dummy or non-existent persons/IECs, etc.
- (v) where the intent to evade duty is evident and element of *mens rea* / guilty mind is palpable.
- (vi) prevention of the possibility of tampering with evidence;
- (vii) intimidating or influencing witnesses and;
- (viii) large amounts of evasion of duty or service tax at least exceeding 50 lakh rupees.

10. List of Important Notifications/Circulars/Instructions: (For Details-See E-Book NO.02)

Heading	Sub-heading	Subject	Sub-Sub-heading	Notification Instruction / Circular No.	Dated
1.	Issuance of Summons after Search				
	1.1.	<i>Behaviour of Central Excise officers during search / seizure operations</i>		Circular No.65/88-CX.6	06.09.1988
	1.2	<i>Summons to Managing Directors, Directors and other top officers under Section 14 — When not issuable</i>		Instruction Letter F.No.208/122/89-CX.6	13.10.1989
	1.3	<i>Summons in Service tax matters</i>		Instruction Letter F.No.137/39/2007-CX-4	26.02.2007
	1.4	<i>Instructions regarding issue of summons in Central Excise and Service Tax matters</i>		Instruction Letter F.No.207/07/2014-CX-6	20.01.2015
2.	Search				
	2.1	Nil		Nil	Nil
3.	Seizure				
	3.1	<i>Seizure of perishable or hazardous goods — Section 110(1A) of Customs Act</i>		Notification No. 31/86-Customs, as amended	05.02.1986
	3.2	<i>Burden of proof in cases of seizures under Customs Act, 1962</i>		Notification No.204/84-Cus	20.07.1984
	3.3	<i>Seizure of imported goods accompanied by import/duty paying documents</i>		Circular No.95/2003-Cus.	06.11.2003
	3.4	<i>Seizure of goods entered for exportation on account of mis-declaration of quantity, value etc.- Provisional release instructions</i>	3.4.1.	Circular No. 33/2005-Cus.	02.08.2005
			3.4.2.	Circular No. 1/2011-Cus.	04.01.2011
	3.5	<i>Requirement of issuing Show Cause Notice under Section 124 of the Customs Act, 1962 to the owner of goods within stipulated period of six months of the seizure of goods or during extended period - Release of seized goods in case of non-compliance of same under provisions of Section 110(2) of the Customs Act, 1962</i>		Circular No. 7/2013-Cus.	19.02.2013
	3.6	<i>Confiscation of seized goods</i>		Circular No. 5/89-Central Excise	19.01.1989
	3.7	<i>Central Excise - Whether seizure of goods is a pre-condition for ordering confiscation</i>		Circular No. 29/89-Central Excise	02.05.1989
	3.8	<i>Return of seized documents not required by the department in Customs cases</i>	3.8.1.	CBEC Instruction F.No.394/115/88-Cus.(AS),	13.06.1988

Search, Seizure & Arrest

	<i>Seized Documents and Records- Return thereof</i>	3.8.2.	Circular No. 42/88-CX.6	24.05.1988
	NOTE: The above said Circulars were issued when Central Excise Rules, 1944 did not have any provisions providing for returns of the records. Now, the Rules 24 A of the Central Excise Rules, 2002 (Inserted vide notification No. 17/2009-CE (NT) with effect from 7.7.2009) specifically provides for return of records.	3.8.3.	Circular No. 48/88-CX. 6	10.06.1988
		3.8.4.	Member D. O. Letter F. No. 207/09/2006–CX. 6	08.09.2006
		3.8.5.	Circular No. 171/5/96-CX	02.02.1998
	3.9	<i>Intimation of seizure, detention & confiscation of goods to custodians</i>	Circular No. 38/2004-Cus.	31.05.2004
	3.10	<i>Clearances not conforming to adjudication order while appeal there against pending — Seizure not to be effected</i>	Circular No. 906/26/2009-CX.	03.12.2009
4.	Arrest and Bail			
	4.1	<i>Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962</i>	Circular No. 38/2013-Cus.	17.09.2013
	4.2	<i>Arrest and Bail under Central Excise Act, 1944</i>	Circular No. 974/08/2013-CX	17.09.2013
	4.3	<i>Guidelines for arrest and bail in relation to offences punishable under the Finance Act, 1994</i>	Circular No. 171/6/2013-S.T.	17.09.2013
5.	Disposal of Seized Goods			
	5.1	<i>Guidelines for the sale of seized/ confiscated gold</i>	Instruction F.No.711/164/93-Cus (AS)	08.08.2005
	5.2	<i>Delay in disposal of seized/ confiscated vehicles - DAP No.59 proposed for inclusion in the C&AG's Report on Indirect Taxes (Customs) for 2004-05</i>	Instruction F. No. 715/7/2005-Cus.(AS)	02.09.2005
	5.3	<i>Requirement of issuing Notice to the owner of goods- provisions of Section 150 of the Customs Act, 1962</i>	Instruction F.No. 711/4/2006-Cus.(AS)	14.02.2006
6.	Miscellaneous			
	6.1	<i>Submitting summary of progress report on important cases of seizures/ prosecutions / recovery</i>	Circular No. 22/22/94-CX.6	15.02.1994
	6.2	<i>Notification under Sections 13, 14, 19, 21, 28 and Excise Rules 201, 202.</i>	Notification No. 9/99-CE(NT) [as amended]	10.02.1999
	6.3	<i>Implementation of the provisions of COTP Act, 2003 and The Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008"- Empowering the Customs & Central Excise Officers</i>	Circular No. 918/8/2010-CX.	04.03.2010

11. *Formats related with Search, Seizure & Arrest: (For Details-See E-Book NO.03)*

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