



GUIDELINES ON ISSUANCE OF SUMMONS U/S 70 OF CGST ACT, 2017

GST-Investigation wing issued instruction no. 03/2022 (GST-Investigation) dated 17th August 2022. The instructions are issued because it has been brought to the notice of the Board that in certain instances, summons under section 70 of the central Goods and Services Tax Act, 2017 ('the CGST Act') have been issued by the field formations to the top senior officials of the companies in a routine manner to call for material evidence / documents. Besides, summons have also been issued to call for statutory records viz. GSTR-3B, GSTR-1 etc., which are available online in the GST portal.

As per Section 70 (1) of the CGST Act, summons can be issued by the proper officer to any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in an inquiry, in the same manner as in the case of a civil court under the provisions of code of civil procedure.

As per Section 70(2), securing such documentary and oral evidence under the said legal provision shall be deemed to be a "**Judicial Proceeding**" within the meaning of section 193 and section 228 of the Indian Penal Code. While issuing of summons is one of the instruments with the Department to get/obtain information or documents or statement from any person to find out the evasion of the tax etc., However, it needs to be ensured that exercise of such power is done judiciously and with due consideration. Officers are also advised to explore instance when instead of restoring to summons, a letter for requisition of information may be adequate. Previously in respect of legacy laws, the Board has ensured the officers regarding sensitivity of use of power of issuance of summons. However, Board finds it necessary to issue fresh guidelines under CGST.

Accordingly, Board desires that the following Guidelines must be followed in matters related to investigation under CGST:

- i. Power to issue summons are generally exercised by Superintendents, though higher officers may also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.

- ii. Where for operational reasons it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity.
- iii. In all cases, where summons are issued, the officer issuing summons should record in file about appearance/ non-appearance of the summoned person and place a copy of statement recorded in file.
- iv. Summons should normally indicate the name of the offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation, so that the recipient of summons has prima-facie understanding as whether he has been summoned as an accused, co-accused or as witness.
- v. Issuance of summons may be avoided to call upon statutory documents which are digitally / online available in the GST portal.
- vi. Senior management officials such as CMD/ MD/ CEO/ CFO/ similar officers of any company or a PSU should not generally be issued summons in the first instance. They should be summoned when there are clear indications in the investigation of their involvement in the decision making process which led to loss of revenue.
- vii. Attention is also invited to Board's Circular No. 122/ 41/ 2019-GST dated 5th November, 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Format of summons has been prescribed under Board's Circular No. 128/ 47/ 2019-GST dated 23rd December, 2019.
- viii. The summoning officer must be present at the time and date for which summons is issued. In case of any urgent need, the summoned person must be informed in advance in writing or orally.
- ix. All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appears in public or privileged persons. The exemption so available to these persons under section 132 and 133 of CPC, may be kept in consideration while investigating the case.
- x. Issuance of repeated summons without ensuring service of the summons must be avoided. Sometimes it may so happen that summoned person does not join investigations even after being repeatedly summoned. In such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate alleging that the accused has committed offence under section 172 of Indian Penal Code (absconding to avoid service of summons or other proceedings) and/or 174 of Indian Penal Code (non-attendance in obedience to an order from public servant), as inquiry under section 70

of CGST Act has been deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code. Before filing such complaints, it must be ensured that summons have adequately been served upon the intended person in accordance with section 169 of the CGST Act. However, this does not bar to issue further summons to the said person under section 70 of the Act.