

SUBJECT

GUIDELINES ON ISSUANCE OF SUMMONS UNDER SECTION 70 OF THE CENTRAL GOODS & SERVICES TAX ACT , 2017 -REG.

INSTRUCTION NO:

03/2022-23(GST INVESTIGATION)

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DATED :- 17/08/2022

The following Guidelines are issued taking into consideration the fact that Summons under Section 70 of the Central Goods and Services Tax Act, 2017 have been issued by revenue authorities as follows :-

- Summons to top senior officials of companies in a routine manner to seek material evidence/documents.
- Summons have been issued for production of Statutory records viz. GSTR-3B, GSTR1 etc. available online on the GST Portal.

Section 70 of CGST Act, 2017 –

Power to summon persons to give evidence and produce documents

- The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.
- Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

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It is suggested that though summons are instruments used by authorities for detecting tax evasion, this power should be exercised judiciously. Also wherever feasible, a letter for requisition of information maybe issued instead of a summon.

Guidelines for investigation under CGST issued by Board :-

- Though summons are generally issued by Superintendents but senior officials may also issue summons along with the reasons for issuance of summons to be recorded in writing.
- Summons by Superintendents to be issued only with prior written permission from an officer not below the rank of Deputy / Assistant Commissioner and in exceptional cases oral/telephonic approval by such officer is permitted subject to bringing the fact on record at earliest.
- Records of appearance/non – appearance of the person summoned along with the copy of the statement recorded should be maintained in the file.
- Summons shall be avoided for obtaining statutory documents available digitally / online on the GST Portal.
- Summons should normally mention the name of the offender who is being investigated unless revealing of the name is detrimental to the investigation. This gives a clarity to the recipient of summon regarding his status of being an accused, co-accused or a witness in the undergoing investigation.
- Senior Management officials such as CMD/MD/CEO/CFO and similar officers of any company or PSU should not be issued summons directly unless it is found out that that they were involved in the decision that resulted in the loss of revenue .
- As per Board's Circular No. 122/41/2019 – GST dated 5th November, 2019, it is mandatory for the officers of CBIC to mention Document Identification Number (DIN) on any communication issued to tax payers and other concerned persons for the purpose of investigation.
- Presence of summoning officer at the time and date for which the summons is issued is necessary except in any exigency, in which case prior written/ oral intimation should be given to the person summoned.
- It is mandatory for the person summoned to appear before the concerned officer except for women who do not by tradition appear in public or privileged persons as per exemptions available to them under Section 132/133 of CPC.
- Repeated summons should not be issued without ensuring their proper service in accordance with the provisions of Section 169 of the CGST Act. If after repeated summons, generally three summons at reasonable intervals, the summoned person does not join investigation, complaint should be filed with the jurisdictional magistrate for offence committed under Section 172/ 174 of IPC but only after giving a reasonable opportunity of being heard to the concerned person.

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