

# DETAILED ANALYSIS OF SUMMONS

**Including Taxpayer Rights & Duties**

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## **Introduction**

With passage of time the complexities of GST have only increased and so has the aggression of the tax authorities to recover taxes from the taxpayers. Lately, many companies, their employees and key managerial persons have been receiving summons for some or the other matter.

Under GST Law, section 70 of the CGST Act, 2017 empowers the GST officers to summon any person to appear before them, if the same is necessary in the course of an inquiry to record statements or produce any documents. Such persons summoned by the GST officers are duty bound to appear before the officers. It is worth noting that the summons and information gathered thereafter is the first step towards proceedings under GST law. Therefore, it becomes Necessary for the taxpayers to know how to deal with such summons and be aware of their rights and duties.

This section has vital role in investigations and non-compliance to summons could lead to penalty and arrest provisions. Therefore, it is advised to the comply with summon proceedings with utmost care. As an honest citizen of this country it is our duty also to support Department in their investigations.

The entire community is aggrieved if the economic offenders, who ruin the economy of the State, are not brought to book. A murder may be committed in the hit of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view **white collar crimes** with a permissive eye unmindful of the damage done to the National Economy and National Interest.

## **Know your officers**

Most importantly the taxpayers should know if the officer issuing such summons is a proper officer (PO) or not as per the GST law. The officers of audit wing do not have powers to issue the summons but Director General of GST (Intelligence) DGGI has been given very wide powers in the form of all India jurisdiction to exercise this power. Any summon issued by the officers not empowered under the law can be challenged by the taxpayers.

## **Duties of a taxpayer**

Summon proceedings are equivalent to 'judicial proceedings' as under the Indian Panel Code. Hence, the taxpayers should be cautious while dealing with the tax officers. During the summons proceedings, GST officers may call upon the documents and record statements of the employees/directors/key managerial persons operations of the company.

**Firstly**, while making any statements or submitting any documents, the taxpayers should know the consequences of such submissions. Unlike in case of police officers, the statements made before the GST officers are admissible as evidence against the taxpayer. The issue is no more *res integra* as this position has been addressed by the Supreme Court in case of the customs officers wherein it was held that customs officers do not constitute police officers even if they may have specific powers and hence any statement made before the customs officers will be admissible as evidence.

The issue also came up under GST law before the **Telangana High Court** wherein it has been held that GST officers are *not police officers for the purpose of Indian Evidence Act* and thus, any statements made before them would *have evidentiary value*. Therefore, the taxpayers need to be conscious while making any statements before the GST officers as these can form the basis for issuing notices or taking any action punitive against them.

**Secondly**, it is important that taxpayers give their answers in the truest manner and to the best of their knowledge. Providing false statements tantamount to an offence under the Indian Penal Code. Thus, in order to safeguard themselves from such eventualities, it will be in the best interest of the taxpayers to provide all the information/replies asked by the tax officers accurately without any deliberate suppression on their end.

As we discussed duties in case of summon proceedings, the taxpayers should also be aware of their rights which will protect the interest at various stages of such proceedings.

### **Rights available to a taxpayer**

Most of the time, it has been seen that the department causes undue harassment to the bona fide taxpayers. Hence, it is of utmost importance that the taxpayers must be aware of their rights that can be exercised by them to safeguard themselves from any unilateral action on part of the tax authorities.

To begin with, the taxpayers must be aware that **Central Board of Indirect Taxes & Customs (CBIC)** has issued detailed guidelines for regulating summon proceedings which inter-alia provides that summons should only be used as a **last resort** where taxpayer is not cooperating, should only be issued against senior management if investigation indicates their involvement and not at first instance, should not be issued for appearance at odd hours, statements must be recorded during official hours etc. These guidelines clearly provide that language used in summons should not be unnecessarily harsh to cause stress or embarrassment to the taxpayer and should provide the justification of its issuance.

## SUMMON TO PRESENT AT ODD HOURS NOT PERMISSIBLE

Although there is no express provision in the law which bars proper officer to require the presence of the person at odd hours, it was held in the case of *Agarwal Foundries Vrs UOI 121 taxmann.com 134 (Telengana HC)* as follows:

“In our opinion, the respondents cannot contend that they will interrogate the persons suspected of committing any tax evasion as per their sweet will forcibly keeping them in their custody for indefinite period. If it is done, it has to be construed as informal custody and the law relating to an accused in custody has to be expressly or impliedly applied.

If accused can get all the benefits under Art.22 of the Constitution, a person in such informal custody can say that he is also entitled to get relief under Art.21 of the Constitution of India.

This view has been taken by the Gujarat High Court in **JigneshKishorbhai MSR,J & TA,J ::31:: wp\_28268\_2019 Bhajiawala v. State of Gujarat** while dealing with similar actions of authorities under the Prevention of Money Laundering Act,2002.”

## SUMMON TO MANAGING DIRECTOR/ GENERAL MANAGER

CGST Act does not bar proper officer to issue summon to Managing Director or General Manager of a company. It has evolved through jurisprudence that the proper officer must be reasonable and must not act in an arbitrary manner.

Honble Jharkhand High Court while dealing with similar case has held in the case of *SudhirDeoraVrs CCE* that although the officer has legal right to summon any person including Managing Director or General Manager, but he should not summon them unless it is required for the purpose of an inquiry.

Similar view was also express by **Honble Delhi High Court in the case of GailGas Ltd Vrs DGGI (2018) 100 taxmann.com 242.**

Apart from knowing these guidelines, taxpayers should also be aware of the following rights which can be exercised by them during the summon proceedings:

- **Right of retraction:** Tax officers often put undue pressure on taxpayers as a result of which they are forced to make inaccurate statements. In such a situation, taxpayers have the right to retract the earlier incorrect statement recorded during the summon proceedings and substitute the same with the correct statement. This will safeguard the taxpayers from any adverse action being taken by the tax authorities based on such incorrect statements.
- If the statement has been retracted, the same may *not be admitted as evidence* in case such retraction is not seen as after-thought and there was no long gap between the date of tendering the statement and re traction of the same.

- A question arises whether a person is required to answer all questions when summoned by a revenue officer during the proceedings, investigation etc. While a person is necessarily required to attend and speak the truth when he answers the questions, he may refuse answer questions on the ground that it would incriminate him.
- *The revenue officer is not a police officer and hence the bar under Section 25 Indian Evidence Act,1872 on confessions made to a police officer being inadmissible may not apply.*
- **Right to remain silent:** In case, a taxpayer does not know the answer to any question posed or is not sure of the answer, he may exercise this right and remain silent. It is to be noted that the said right is a *constitutional right* available to the taxpayer and will not be considered as an offence or causing obstruction to the proceedings as affirmed by the Supreme Court and High Courts in various judgments.
- Article 20(3) of Constitution of India guarantees fundamental right against self-incrimination. It says – No person accused of any offence shall be compelled to be a witness against himself. Further, section 161 of Cr PC provides that no person is bound to answer any question which exposes him to a criminal charge.

In the case of **NSR Krishna Prasad (1992) 57 ELT 568 AP** it was held that right to silence is not an offence and cannot be said to be an obstruction to a proceeding.

Further in case of **Padam Narain Agarwal AIR 2009 SC 254** it was held that a person is not absolved/free from speaking the truth on the ground that such statement could be used against him.

- **Right to cross-examine:** Tax authorities sometimes tend to manipulate the summoned person by giving reference to the adverse statement given by any third person who can be his colleague, vendor/dealers of the company, etc. In such a situation, the taxpayer need not concede to such statements made by any third person and can exercise his right of cross-examining the other person to verify the adverse statements made by him.
- **Refreshing Memory:** It is advisable to take time rather than giving incorrect statement. Section 159 of Indian Evidence Act allows it.
- **Refer Books of Accounts:-**While recording statement, he is allowed to refer Books of Accounts and other documents before giving statement. He is not expected to remember everything (Chelapati Ganeswar Rao SC).

*By appreciating the duties and recognizing the rights, a taxpayer can mitigate any adversities which may be caused to them by issuance of summons and not succumb to any pressure imposed by the authorities. Thus, it is imperative that a taxpayer is diligent and mindful of the foregoing rights and duties*

## **Brief about Summons**

In day to day life we always hear the word 'Summon', like ED summoned to this person, court summoned to this celebrity etc. A Summon is a call by court or any administrative body of government in written to an individual to appear in court or concerned office in person at a specified time and place regarding any investigation or enquiry on any matter or case.

A summon may be issued in both criminal and in civil cases.

### **Summon**

To order a person to come to a place

### **What is a summon example?**

To summon is to order to meet, to bring together or to order to come. An example of to summon is **to ask for someone to come to your room**. An example of to summon is to call for a meeting. An example of to summon is to send a legal order

### **What is known as summon?**

Summons, also called Citation, in law, **document issued by a court ordering a specific person to appear at a specific time for some specific purpose**. It is issued either directly to the person or to a law officer who must carry out the instructions

A summon, in simple words, is an order to appear or mark your presence before a judge or a magistrate for any enquiry or against wrongdoing which could be civil, criminal or both. It is also known as CAN in a few parts of the world, i.e. Court Attendance Notice. In legal terms, a summons is also known as a citation, requiring an under-mentioned person to be present at a notified place, at the advised time and for the announced purpose.

### **What is a synonym for a Summon?**

Some common synonyms of summon are **call, cite, convene, convoke, and muster**. While all these words mean "to demand the presence of," summon implies the exercise of authority. was summoned to answer charges.

### **Summons**

A summon is a document issued either for the appearance or for producing a document or an item which may be issued to an accused person or witness.

Section 61 of the Criminal Procedure Court states that every summons issued by the Court shall be in writing, in duplicate along with the signature of the Presiding Officer of such Court or by

such an officer as is authorised by the High Court and shall bear the seal of the High Court. The summons should be specific and clear in its terms regarding information such as the title of the Court, the place at which, the day and time of the day when the attendance of the person summoned are required.

### **What is summons in Indian court?**

A summons is **an officially issued document that is released by any Court on an individual or an entity who may be involved in a legal proceeding**. A summon is usually served when legal action is taken against an individual, or a person is required to appear before a court as a witness in a proceeding.

### **Why is a summons issued?**

A summon is usually served **when legal action is taken against an individual, or a person is required to appear before a court as a witness in a proceeding**. This document ensures that the person is called upon and his presence on the given date of the hearing.

### **Types of Summons:**

#### **Civil Summons**

A civil Summons is a judicial summons given by one private person or entity to another private person or entity to appear in court and respond to a petition filed in court.

A civil summons is a more specific description of a type of court summons.

This type of summons informs the defendant that there is a civil action taken against it and they must show up in court to respond to the allegations.

Typically, a civil action involves a lawsuit claiming damages, compensation for a loss or injury or injunction to force someone to do or not to do something.

Some examples of a civil lawsuit are:

1. Breach of contract lawsuits
2. Injunction
3. Claim for money owned
4. Intellectual property infringement

#### **Criminal Summons**

A criminal summons is a type of judicial summons notifying someone to appear in a criminal court. Depending on your jurisdiction, there may be different types of summons a criminal court can issue.

There are different types of summons issued in the context of criminal proceedings, some are issued by police and others by the prosecutor.

For example-

1. a citation,
2. traffic summons
3. notice to appear

These all are different types of summons in law related to a criminal-type of proceedings.

### **Citation Summons**

A citation is a notice to appear before a criminal court for a relatively minor charge.

Typically, a citation is delivered by the police officer directly on the spot. For example, if someone was not allowed to drink alcohol in the park, they may get a citation of such violation. The police officers will issue the citation directly to the person spotted drinking in the park.

### **Traffic summons**

A traffic summons is issued by the police for traffic violations.

Traffic laws establish rules intended to protect us and keep us safe on the roads.

Breaking traffic laws in some cases will lead to the issuance of a traffic summons.

For example, if you are caught for reckless driving, driving under the influence of alcohol or drugs, you will receive a traffic summons which in reality is a criminal summons as these violations are often criminal in nature.

A traffic summons may not necessarily be for a severe criminal violation but a violation requiring you to appear in court and respond to the allegations against you. Some other traffic violations do not lead to the issuance of a traffic summons such as parking tickets.

In these cases, you get a ticket without being called to the court.

### **Notice to appear**

An appearance notice or notice to appear is a type of summons informing you that you must respond to criminal charges.

A notice to appear in some cases is issued before you are formally charged for a crime.

For example, if someone is caught shoplifting, the police will provide the person a notice to appear on the spot.

Later on, the police will present the shoplifting evidence to a prosecutor who will confirm the criminal charges.



In some jurisdictions, a criminal proceeding may proceed by summary conviction, indictable offense or dual offenses.

Criminal summons can be issue in cases like:

1. Trespassing
2. Armed robbery
3. Assault
4. Murder
5. Driving under the influence of alcohol (DUI)

### **Administrative Summons**

Administrative summons is another type of *judicial summons issued by an administrative body* authorized in law to handle a specific type of investigation or legal matters.

For example, every jurisdiction will have a tax authority in charge of handling all matters related to taxes.

Your tax authority may have the power to issue a summons for you to appear and provide information related to your taxes.

Administrative summons can be issued by different types of administrative courts such as:

1. Tax court
2. Immigration court
3. Labour courts
4. Professional code

### **Sections of Summons:**

#### **Section 61 in The Code of Criminal Procedure, 1973**

Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court,

#### **Section 62 in The Code of Criminal Procedure, 1973**

Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Every person on whom a summons is so served shall, if so, required by the serving officer, sign a receipt there for on the back of the other duplicate.

#### **Section 63 The Code of Criminal Procedure, 1973**

Service of summons on corporate bodies and societies Service of a summons on a corporation may be affected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed to have been affected when the letter would arrive in ordinary course of post.

Explanation. – In this section” corporation” means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

#### **Section 64 The Code of Criminal Procedure, 1973**

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some *adult male member* of his family residing with him, and the person with whom the summons is so left shall, if so, required by the serving officer, sign a receipt there for on the back of the other duplicate.

*Explanation.* – A servant is not a member of the family within the meaning of this section.

#### **Section 65 The Code of Criminal Procedure, 1973**

If service cannot by the exercise of due diligence be affected as provided in section 62, section 63 or section 64, the serving officer *shall affix* one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

#### **Section 66 in The Code of Criminal Procedure, 1973**

Where the person summoned is in the active service of the Government the Court issuing the summons shall ordinarily send it induplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

Such signature shall be evidence of due service.

#### **Section 67 The Code of Criminal Procedure, 1973**

When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

#### **Section 68 The Code of Criminal Procedure, 1973**

When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64)

by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

### **Section 69 The Code of Criminal Procedure, 1973**

Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served.

### **What is Summon in CPC?**

The intimation which is sent to the other party (defendant) is called summons. The provision related to summons are given in Section 27-32 and Order V of CPC. Summons is an authoritative call from the court to attend the court at a specified place and at a specified time

### **What is summons in court?**

Summons, also called Citation, in law, document issued by a court ordering a specific person to appear at a specific time for some specific purpose. It is issued either directly to the person or to a law officer who must carry out the instructions.

### **What happens when you receive summons?**

A summons is the first process for a legal claim where a Plaintiff has instituted an action against a Defendant. Once the summons is served via Sheriff, you will have 10 days to respond with a Notice of Intention to Defend or attempt to negotiate a settlement with the Plaintiff.

### **How are summons served?**

Every summon shall be served by a police officer, or by an officer of the court issuing it or any other public servant. The summon shall if practical, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons

### **What happens if unresponsive to summons**

If anyone is unresponsive to a summons also known as legal notice the court would respond by or the course of action of the court would be initiating ex parte legal proceedings which would

entail the plaintiff proving his claim through the legal procedure as well as by evidencing supporting his claim

### **Can summons be cancelled?**

**Yes**, the summons can be cancelled or quashed as appropriately required by law dependent on the facts of settlement and the terms and conditions determined therein between the parties. The legal procedure has to be followed for the same.

### **Does a summons expire?**

Under the Rules of the Superior Courts, a Summons (the document that initiates legal proceedings) remains in force for a 12-month period from the day it is issued<sup>1</sup>. If the Summons is not served on the defendant(s) within that 12-month period, it expires and cannot then be validly served

### **What happens if a court summons is ignored?**

If you are given a summons in a civil lawsuit and you don't reply or go to the court on the assigned day the other person points out to the court that you are not interested in the case. The jury will have to take a default judgement against you.

### **What is the object of summons?**

The objects of the summons are to:

Provide the information to the defendant that a suit has been instituted against him. For the principle of natural justice, The court may direct the defendant to file the written statement in his defence.

### **What happens after court summons?**

Once a Summon is signed by the Presiding Officer/Judge and seal of the Court is affixed, the Summon is then given to a Police Officer to serve the same on the person summoned to the Court, ideally the summon should be served personally on the person who is summoned by tendering the duplicate copy of the summon

### **How many times can a summons be issued?**

Only one summon issued is enough to issue bailable warrant of the accused in cheque bounce case , subject to the condition that the summon should be delivered to the accused and it's report is in file before the date of hearing .

## COMPLIANCE WITH SUMMONS

The assessee is expected to comply with summons which is issued by the GST officer. This would be regardless of the plea of innocence, hardship etc. and even if the adjudication proceedings are ultimately dropped, non-compliance with summons would be separate punishable offence.

**Broadly there are four types of summoning listed below;**

- Judicial Summon
- Citation
- Administrative summons
- Civil Summons

The summons issued under the GST ACT is a type of Administrative summon. As per the case, the officer in charge can call any registered person to appear before and produce evidence or document.

How Summon is different from a notice?

All summons are notice, but all notices are not summon

As discussed above, a summon is an official call upon or invitation to mark your presence at the court or before an officer. However, notice is general information from the court/authority. Notice may or may not result in a summon.

As per GST Act, a summon shall be deemed to be a "legal proceeding" under provisions of section 193 and the section 228 of the Indian Penal Code (45 of 1860).

On the contrary, the same doesn't apply to the notice.

## INQUIRY vs PROCEEDING?

Section 70 uses the expression 'in any inquiry'. Now the question is can the Proper Officer initiate summon in case of pendency of any proceeding against a person who may not be the same person to whom summon has been issued. Can 'inquiry' be equated with 'proceeding'?

The words "proceedings" and "inquiry" have not been defined in CGST Act. Therefore, these words have to be interpreted in the context of the aforesaid Acts.

The word "inquiry" in Section 70 has a special connotation and a specific purpose to summon any person whose attendance may be considered necessary by the proper officer either to give evidence or to produce a document or any other thing. It cannot be intermixed with some statutory steps which may precede or may ensue upon the making of the inquiry or conclusion of inquiry.

The process of inquiry under Section 70 is *specific and unified by the very purpose* for which provisions of Chapter XIV of the Act confers power upon the proper officer (PO) to hold inquiry.

The word “inquiry” in Section 70 is not synonymous with the word “proceedings” in section 6(2)(b) of the CGST Act.

The Hon’ble Allahabad High Court in *G. K. Trading Company v. Union of India &Ors. [Writ Tax No. 666 of 2020, dated December 2, 2020]* has held that inquiry cannot be equated with proceeding. Meaning thereby, summon can be initiated even if there is pending proceeding against the assessee.

### **Summons and Warrants**

A summons is an officially issued document that is released by any Court on an individual or an entity who may be involved in a legal proceeding. A summon is usually served when legal action is taken against an individual, or a person is required to appear before a court as a witness in a proceeding. This document ensures that the person is called upon and his presence on the given date of the hearing.

On the other hand, a warrant is issued to apprehend an individual committing a particular offence(s).

### **Essentials of a Summon**

1. A summon should be clear and specified with the reason of summoning.
2. A summon must be attested with the seal of the court or concerned office.
3. It should have an official name and address of the person summoned.
4. There should be specified date, time and place mentioned in the summon that when the summoned person is required to be appear in the court.
5. It must contain the nature of the offence committed.

### **HOW IS A SUMMON SERVED**

1. Every summon shall be served by a police officer, or by an officer of the court issuing it or any other public servant.
2. The summon shall if practical, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.
3. Every person on whom a summon is served shall sign a receipt on the back of the other duplicate.

### **SERVICE WHEN PERSONS SUMMONED CANNOT BE FOUND**

Where the persons summoned cannot be found, the summons may be served by leaving one of the duplicates for the person with some adult male member of the family residing with him, and

the person with whom the summon is left, shall sign a receipt on the back of the duplicate. A summon cannot deliver to a servant, because servant is not a member of the family.

### **Exemption from personal appearance in Summon**

In civil cases there are ways to exempt from personal appearance as Civil Procedure Code, provides some provisions for exemption.

Order V Rule 4 give some conditions where a person can be exempted from the personal appearance or can send his representative or advocate to the court for appearance by filing an application before the court.

Section 132 of CPC provides exemption of certain woman, who cannot appear before the public according to some customs and laws of any country.

Section 133 of CPC provides exemption from personal appearance to a person who is holding any constitutional position. Even the person cannot be summoned by the court

*In Criminal matters there are very few exception for exemption from personal appearance.*

Section 205 of Criminal Procedure Code, provides discretion to the court to give exemption to an accused from personal appearance at the time of commencement of proceedings.

Section 317 of CRPC, provides exemption from personal appearance at all stages after the commencement of trial

### **What is summons in GST?**

When the proper officer can issue summon ?

Summon can be issued by duly authorized CGST/SGST officer to call upon a person to present himself before the officer to:

- Either give evidence or produce a document or
- Any other thing in any inquiry which an officer is making

## **When can a person expect summon?**

Under Section 70 of C.G.S.T. Act, summon can be issued when a taxpayer is undergoing any inquiry proceedings. Wherein inquiry could be initiated on non-satisfaction of any ground related to compliance, a requirement of law or the notice issued.

As per the latest judgment in the case of **G.K. Trading Company Vs Union Of India And 4 Others (Allahabad High Court)** wherein it was held that G.S.T. authorities are allowed to initiate inquiry proceedings under Section 70 of C.G.S.T. Act, 2017 combined with the proceedings under section 6(2)(b) as the prohibition of Section 6(2)(b) of the C.G.S.T. Act shall come into play only when any proceeding on the same subject-matter has already been initiated by a proper officer under the U.P.G.S.T. Act and therefore, an adequate officer under the U.P.G.S.T. Act or the C.G.S.T. The Act may invoke the power under Section 70 in any inquiry.

Therefore, by the above judgment, it's pretty clear that a person can expect a summon collaterally with the other proceedings under the Act, be it an investigation, search, seizure either to give any evidence or produce a document or anything.

Below are the few listed matters on which inquiry could be initiated if considered necessary by the proper officer:

- The Input tax credit taken is wrongly availed or utilized.
- G.S.T. Refund is wrongly made with or without the intent to defraud.
- Non-payment of G.S.T. liability (tax) or the short payment of the tax with or without the intent to defraud.
- Differences in Input tax credit claims made in GSTR-3B vis-a-vis GSTR-2A/2B
- Delay in filing of GSTR-1 and GSTR-3B consecutively for more than six months
- Inconsistent declaration in GSTR-1 and e-way bill portal etc.

## **Who can be GST Summon Consultant?**

A Practising Chartered Accountant, an Advocate, Cost and Management Accountant or any other professional possessing such knowledge and experience as would be considered sufficient to handle the complexity of the case.

## **Procedure for replying GST Summon?**

Any taxpayer who receives the summon shall first consult a GST Summon Consultant, Who can be a legal practitioner, be it a Chartered Accountant in practice or an Advocate, to know the reason and justification behind such summon?

*As per law, the power to call can be exercised only when there is a need for the appearance of the assessee.*



A taxpayer should be mindful that summons is a legal proceeding, which cannot be ignored. Once the taxpayer and the practitioner are satisfied with the justification and purpose of the summon the taxpayer shall appear on the specified date.

The taxpayer shall state the facts and figures to the practitioner to accumulate and produce objective evidence and statements before the authority. Before the call upon date, he shall be handfult with all the required evidence, documents and statements before the authority.

Under the rigorous inquiry from the authority, the taxpayer shall not testify and sign any documents before reading and understanding the same.

### **How to deal with GST Summon?**

**GST Summon Consultant-** Assessee shall consult the GST Practitioner/Professional to know the reason and justification of the summon.

**Block your calendar for Appearance**– Assessee shall block his calendar for the specified dates.

**Produce** – Assessee shall produce before the practitioner all the facts, figures, evidence and state the absolute truth.

**Be handfult** – Assessee shall be a handfult with all the required documents and information.

**Be mindful** – You should be cognizant while recording your statement; this could be used against you.

**Don't promise** – During the summon inquiry, do not explicitly promise to pay any taxes or penalties; always consult with your practitioner about this.

**Have your words ready** – As we emphasize from the beginning, consult exclusively and be prepared with your comments and performance and disclaim wisely when you are not sure about the same.

**Be confident** – Don't panic in any situation and act wisely and confidently with a fearless attitude

### **What is summon under Section 70 of CGST?**

Section 70 of the CGST Act empowers the proper officer (PO) 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**. The foremost condition before issuing the summon is that the inquiry has already been initiated

## Who is proper officer under GST?

As per section 2(91) of the CGST Act, 2017, “proper officer” in relation to any function to be performed under this Act, means **the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board**

Vide Entry 4 of **Circular 3/3/2017 dated 05.07.2017**, CBIC assigns ‘Superintendent of Central Tax’ as the proper officer for the purpose of section 70. CBIC vide entry 8 of **Notification 14/2017 Central Tax dated 01.07.2017** appoints Senior Intelligence Officer, GST Intelligence or Superintendent, GST Audit and invests them with power that of a Superintendent.

Further **CGST Act** in section 70 has used the word ‘*The*’ before the words ‘proper officer’. It gives meaning that it is the specific officer who has been assigned jurisdiction either on the basis of territory, function or category, has the authority to issue summon under the said section.

Section 70 of the CGST Act empowers the proper officer (PO) 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.

The word summon is not defined in GST as well as in any other law. **The meaning as per Oxford Dictionary means “summon somebody (to do something)(formal) to order somebody to appear in court”**

The foremost condition before issuing the summon is that the inquiry has already been initiated. In relate to that inquiry the PO requires the person either to give evidence or to produce a document or any other thing. **The matter connecting to the inquiry shall have to be explained in the summon issued.** If it is not explained, summon issued may be invalid. **The Circular No. 128/2019 dated 23-12-2019 provides the format of ‘Summon’.**

It is ample clear that provisions of section 70 have been enacted for collecting evidences and materials to frame or proceed the case against the person concern.

Before proceedings or framing a case, the PO shall have to compute the liability of tax, interest and penalty which is mandate under the GST Law. The same may be verified as under:

Section 73 and Section 74 require to issue a statement containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised through GST form DRC-01;

Section 69(2) requires to inform the grounds of arrest;

Offences under section 132 cannot be framed without available of materials and evidences;

The decision for Search and Seizure under section 67 may not be taken without reasons and Decision for Audit or Special Audit can also be taken after when the Authority find reasonable materials on hand.

*Thus, it seems, inquiry is the only tool which can help the PO to proceed the case under proper provisions of the GST law.*

The provisions under section 70 are analysed with judicial decisions as under:

### **1. SUMMON MAY BE ISSUED BY MULTIPLE AUTHORITIES**

**G.K.Trading Company v. Union of India** reported as **2021-VIL-12-ALH** – In this case the Hon’ble Court held that The word “inquiry” in Section 70 is not synonymous with the word “proceedings”, in Section 6(2)(b) of the CGST Act.

*Section 6(2)(b) prohibits the proceedings if the proceedings had already been initiated on the same subject-matter.*

*Since inquire is not at par with the word proceedings, therefore, if the inquiry, is initiated on the matter by multiple authorities, cannot be prohibited by virtue of provisions contemplated under section 6(2)(b) of the CGST Act.*

### **M/s SIDDHI VINAYAK TRADING COMPANY Vs UNION OF INDIA AND 2 OTHERS 2021-VIL-155-ALH**

The opinion of the Court in this case is that the initiation of the proceeding for imposition of tax and penalty was with the issuance of the notice under Section 74 as contained in Chapter XV of UPGST Act and the inquiry under Section 70 of the Act was independent.

### **ANTICIPATORY BAIL**

The question is that whether anticipatory bail may be granted or not before attending the inquiry proceedings under Section 70 of the CGST.

There are differ views explained as under:

#### **Affirmative view in Anticipatory Bail**

### **SH. HARDEEP SINGH BANGA AND 6 OTHERS Vs STATE OF U.P. AND 4 OTHERS – 2021-VIL-694-ALH**

The court allowed the *anticipatory bail* while giving following judgment’s:

- Petitioners are having a good business and social status in society;
- The petitioners have no prior criminal antecedents brought on record;
- The personal liberty guaranteed under Article 21 of the Constitution of India is a fundamental right and, in every case, arrest is not necessary;
- If the petitioners cooperate with the inquiry, there is no requirement of their arrest;

- The petitioners are having their own address of residence and business and they are having a good status in society;
- They can give surety ensuring their appearance;
- They do not appear to be habitual offender, prosecuted or convicted earlier.

*Affirmative view in Anticipatory Bail*

**SRI HANUMANTHAPPA PATHRERA LAKSHMANA Vs STATE – 2020-VIL-249-KAR**

The offences are not punishable with death or imprisonment for life. There is no statutory bar in the CGST Act for granting anticipatory bail by exercising power under Section 438 of the Cr. P.C. Merely, there were number of notices/summons issued by the respondent during the lockdown for COVID-19 that itself is not a ground to reject the bail petition. Considering the fact and circumstances of the case, if an anticipatory bail is granted, no prejudice would be caused to the respondent.

*Dissenting view in Anticipatory Bail*

**DHIRENDRA SINGH Vs THE COMMISSIONER, CENTRAL GST COMMISSIONERATE – 2021-VIL-175-GUJ**

The Hon'ble court views that if the writ applicants have an apprehension that they would be arrested any time, it is open for them to take recourse available to them in accordance with law to take care of such a situation. The application for anticipatory bail was rejected.

**STAY ON PROCEEDINGS INITIATED PURSUANT TO ISSUANCE OF SUMMONS**

**JSK MARKETING LIMITED & ANR.Vs UNION OF INDIA & ORS. – 2021-VIL-114-BOM**

Petitioner seeking stay on proceedings and consequential penal action, initiated pursuant to issuance of summons. The petitioner assumed that he would be apprehended or arrested during interrogation and inquiry.

The Court took the views that the summons makes it succinctly clear that the petitioners are required to tender oral evidence and produce certain documents. Investigation is under way pursuant to the raid which was carried out at the premises of the petitioners. It is therefore incumbent upon the petitioners to cooperate in the investigation / GST inquiry.

The summons issued to the petitioners does not authorize the investigating officer to arrest petitioner No.2, but have been issued only for the purpose of completing the investigation into evasion of GST undertaken by respondent No.2.

*In this view of the matter, we do not see any reason for the petitioners / petitioner No.2 to apprehend or arrest on presenting himself before the investigating officer in response to the summons which have been issued to the petitioners.*

In view of the aforementioned legal position, the summons issued to the petitioners/ petitioner No.2 are valid and no interference is called upon.

**In the case of National Building Construction Co. Ltd. v. Union of India [2018] 100 taxmann.com 307 the observation of the Court was that “Courts would, however, not interfere merely because the authority has exercised discretion that is not acceptable to the assessee. The choice whether or not to exercise power of special audit, summons etc. is for the respondents to decide and exercise, and not for the petitioner to direct.”**

#### **TENDER THE STATEMENT AND ADDUCE EVIDENCE THROUGH VIDEO CONFERENCING P.V. RAO Vs SENIOR INTELLIGENCE OFFICER, DIRECTORATE GENERAL OF GST INTELLIGENCE & ORS – 2020-VIL-566-DEL**

The petitioner sought his presence before the GST Authority through the video conferencing on various reasons and grounds. The Hon’ble court held that the concept of *balance of convenience cannot be tilted in favour of the Petitioner* to be allowed to appear through video conferencing, merely because travelling from Bengaluru to New Delhi would be a risk factor for the Petitioner of contracting COVID-19. This mere apprehension of contracting COVID-19 does not persuade us to grant the relief sought for by the present Petitioner.

#### **RECOVERY DURING INQUIRY**

It is clear law that during investigation or inquiry the Authority cannot force and compel to pay any amount of tax etc. by the person concern. Even the Authority shall not take such coercive steps which compel the person to pay the tax.

**In the case of Clear trip Private Ltd. and Ors. wherein a Bench of the Bombay High Court said** that “there is no question of any recovery of tax by coercive means, unless the investigation results into issuance of a show cause notice, an opportunity to the Petitioner to resist the demand, an adjudication thereof by a reasoned order and protective remedies such as appeals. We do not think that any recovery by coercive measures is straightway permissible.”

**In the case of Bhumi Associate** the Gujrat High Court said that “No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under any circumstances.

#### **INTIMIDATED AND MINATORY LANGUAGE ON NOTICE NOT PERMISSIBLE**

**In the case of National Building Construction Co. Ltd. (supra)** the observation of the court was that the letters/notices must be appropriately worded. In a given case they may refer to the penal or prosecution provisions to ensure compliance but they should not use intimidated and be minatory language in notice.

## **MATTERS RELATING TO THE INQUIRY**

### **M/s AGARWAL FOUNDRIES PRIVATE LIMITED RAMA TOWERS AND 3 OTHERS Vs UNION OF INDIA AND 9 OTHERS – 2020-VIL-540-TEL**

**The Hon'ble Court allowed the writ petition and directed as under:**

**VOILENCE AND COERCION BY THE GST OFFICIALS** – The respondents cannot claim any liberty to torture or use physical violence during the course of search, investigation or interrogation under the **CGST Act, 2017** against persons suspected of tax evasion.

**TIMINGS FOR APPEARING** – Any interrogation of petitioners or their employees shall be between 10:30 a.m. and 05:00 p.m. on week days.

**PRESENCE OF A LAWYER** – The lawyer may present in the inquiry in the visible range, who shall not be in hearing range.

**RESTRICTION UPON THE ERRING OFFICER** – The Court directed that the erring official shall not participate in the enquiry, and it shall be transferred to another official.

**Location of investigation** – The court disallowed to conduct the inquiry of about 50 persons of the petitioner in New Delhi head office while consider the situation of covid-19 pandemic and the high cost involved. The court directed that the petitioner nos.2 to 4 alone can be summoned to New Delhi for the purpose of the above inquiry by the respondents on one occasion for two to three days, and rest of their interrogation and those of their employees shall be conducted at zonal office Hyderabad.

### **What is the maximum penalty for GST?**

An offender not paying tax or making short payments must pay a penalty of 10% of the tax amount due subject to a minimum of Rs. 10,000. Consider — in case tax has not been paid or a short payment is made, a minimum penalty of Rs 10,000 has to be paid. The maximum penalty is **10% of the tax unpaid**.

### **What are the guidelines for issue of summons?**

- summons is to be issued as a *last resort* where assesses are not co-operating and this section should not be used for the top management;
- the *language of the summons should not be harsh* and legal which causes unnecessary mental stress and embarrassment to the receiver;

The summon can be given for giving evidence by way of *statement on oath* or production of any books or accounts, documents or other things. At the time of tendering the statement, it is quite possible that a person doesn't have exact knowledge of facts and/or figures or might have forgot the same.

In such a case the documents can be referred to refresh memory and statements can be given accordingly.

As per **Section 59** of the Indian Evidence Act 1872, “a witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

As regards to presence of advocate at the time of taking statement by Tax Authorities, it has been held that it is not a right of the tax payer to have its counsel along with him.

However, looking to the medical or other conditions the counsel may be allowed to attend the proceedings, however no consultation is allowed at the time of recording the statements.

We may also take notice of the views expressed by the Hon’ble Supreme Court In *Poolpandiv. Superintendent Central Excise* [1992].

The Hon’ble Supreme Court – in that case – was considering a situation as to whether the petitioners were entitled to the presence of their lawyers when they were being questioned during investigation under the provisions of Customs Act, 1962 and the Foreign Exchange Regulation Act, 1973. There was a difference of opinion between the High Courts on this issue.

The Supreme Court –in its judgment – has made certain observations while considering as to whether Article 21 is violated if a person is called away from his own house and questioned in that atmosphere of the Customs office without the assistance of his lawyers or his friends. In this context, the following observations of the Supreme Court would be worthwhile to be noticed and quoted:—

“It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits.

The purpose of the enquiry under the Customs Act and the other similar statutes (emphasis supplied by this Court) will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be “expanded” to favour exploiters engaged in tax evasion at the cost of public exchequer.

*Applying the 'just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us."*

*It is submitted that issue of summon in any inquiry, to witness or give evidence should be reasonable and not arbitrary. The authority issuing the summon must issue summons to a witness only when the authority considers it necessary for summoning. This necessarily implies application of mind and is guided by the principles of reasonableness in the matter of summoning of witness. Guiding force for issuing summon should be 'necessity of witness for the purposes of inquiry'.*

### **Writ against Summon**

To a limited extent, the Writ Court can go into the question. The Hon'ble Allahabad High Court in **Ankit Bhutani Vs Union of India (Writ Tax No. 132 of 2020)** has refused to entertain a writ petition of an applicant who consistently evaded summons of GST Intelligence as the court believed that consistent absence was a sign of disinterest to cooperate with the revenue department.

### **What can be the consequences of non- appearance/Non-response to summons?**

The proceeding before the official who has issued summons is deemed to be a judicial proceeding. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC).

If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC.

In case he gives false evidence, he can be prosecuted under section 193 of the IPC.

If the summoned person fails to attend or produce documents without lawful excuse, the court has the power to issue a warrant of arrest, with or without bail and may also issue an order for attachment of his property and also impose fine.

In situations where a person refuses to record any statement, the summoning officer should record his non-cooperation and submit the same to his superior officer for further necessary action. Invariably, in such cases the matter should be brought to the notice of the Magistrate.

If a person does not appear for statement even after repeated Summons, then after giving reasonable opportunity, generally 3 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 Section 174 of IPC (non attendance in obedience to an order from public servant); and/ or Section 175 of IPC (Omission to produce documents called for to public servant by the person legally bound to produce it).

The Courts generally issue necessary directives to the accused to join investigations.



The court may also issue a proclamation before issuing arrest warrant. Same powers have been vested with proper officer under CGST Act also by drawing such powers from CPC. Such arrest/attachment may be cancelled if the person satisfies the court (proper officer in the context of CGST Act) the failure to attend as per summons was not without lawful excuse [Order XVI Rules 10 to 16 of CPC].

Attendance through the process of summons has, therefore, serious consequences, if such summons are not complied with under GST law. While the power to arrest under Section 69 of CGST Act is resorted to in suspected cases of major tax evasion adopting fraudulent methods, the above said arrest provision of CPC is procedural to require a person attend the proceedings when he refuses to attend.

In addition, if a person does not appear before a CGST/ SGST officer who has issued the summons, he is liable to a Penalty of Rs. 25,000 under Section 122(3)(d) of CGST/SGST Act is imposable for failure to appear when summoned or for failure to produce document despite issue of summons in an inquiry. This is a monetary penalty imposable in addition to the consequences discussed above.

### **What to be do when issue of summons to a person under GST ?**

A summons is an act of forcing someone to be present in front of authority. The GST officers responsible can, as the case may be, summon *any registered person* to present with some evidence or records.

Almost all persons to whom a summons is rendered shall be obliged to attend, whether in person or by an appointed agent, in the event that the taxpayer is not a natural person. The person summoned could only request postponement of the summons on the grounds of legitimate reasons/predefined official meetings, inevitable causes such as sickness, being out of the country or personal issues such as the death of a close relative.

If a person has been unable to attend on a set date and time, he or she must intimate the reason why he or she is unable to attend and request that a fresh date be fixed with a prior intimation.

The person representing the summons must state the truth on any question posed. If the requested information is not known to the summoned person, it should be explicitly mentioned that the information is not known.

If you need time to get the details you are searching for, then request for time. This will suggest that no false claims are made which will be used against the assessee if Show Cause Notices (SCN) is subsequently released.

### **GUIDELINES ON ISSUE OF SUMMONS UNDER GST**

The authority/officer shall issue the summons only as a tool of last recourse, in the case of an assessor who does not cooperate.

The sound/tone of the summons' language must not be harsh and lawful, which can contribute to excessive mental stress on the recipient.

**If the Superintendent wishes to issue a warrant, he must receive prior written authorization from an investigator whose rank is equal or greater than that of the Assistant Commissioner.**

Where, for operational purposes, such prior written permission cannot be obtained, oral / telephone conversations permission is required from such an officer, and the same can be reduced to writing and reported to the officer as quickly as possible pursuant to such consent.

The summoning officer must therefore submit the summons or document a summary of the procedures for presentation to the officer who had been allowed to issue the summons.

No summons shall be given abruptly to senior management officials such as the CEO, the CFO or the General Manager. The agency can issue a summons only on the basis of proof of its participation in the decision making process leading to a loss of revenue.

### **Precautions**

There has to be a proper reason for the summons to be issued. The authority of summons should be exercised only if there is a need for the presence of the assessee.

The individual shall stop repeated summonses. The transcripts of the statements made by the accused shall represent the minimum number of appearances practicable.

The importance of time and commitment of the candidate must be respected and the summons made on time, except in situations where it is a matter of policy.

The authority shall, however, assess the claims of the assessee just during the business hours, subject to the few exemptions.

### **Silent feature of Summons provisions**

The summons is a legal proceeding that can not be ignored.

Officers of the rank of Superintendent and above shall be allowed to enforce summonses.

The summons should specify the purpose of the investigation. It's not meant to be ambiguous.

The person summoned must attend and state the truth of the matter under consideration.

The assessee/individual is bound to submit all the documents requested. State the appropriate time needed to provide the same if it is not available.

The party summoned shall appear and the designated delegate shall not be able to appear on his behalf. The assertion should be reported during the request made during the summons.

***The statement is admissible as evidence and can be used in legal proceedings against an individual.***

The declaration should be made on a voluntary basis and not under the pressure of intimidation or even worse dictation.

The assessee should be summoned and put out a statement throughout work time. As per Circular No. 65/88 of the Board of Directors, dated 6- 9- 1988, issued by CBEC pursuant to CE, the summoned persons should not be questioned at odd hours. The Board vacuums the Circular in F. 208/122/89- CX. 6, 13- 10- 1989 requested the officers to show caution when selecting the senior management members of the company. The summons to managing directors, directors, and senior officers must be rendered only if the assesses do not comply and this service should not be used to pressure management.

**Note:**

In the light of the fact that GST promotes 'Ease of Doing business,' the guideline referred to above should apply equally to GST and to employees who do not wish to obey them, who may have complained against it.

*Few more important point to take into consideration while dealing with the GST Summons Provisions*

If the Assessee is not comfortable with the English language, he or she can ask to be reported in the native language.

If you want a cross examination about any other person, you should ask the officer to summon and cross examine some other person.

Do not make any tax payment/confessions/concessions in the summons that are also contrary to the procedure adopted by due process of the law by the agency.

The assessee should ensure that the positive details leading to concessions/immunity/exemptions are reported in a copy of the declaration.

If the officer concerned is not aware of the facts, he should recommend that the employee who is acquainted with the truths and the summons shall be provided appropriately.

Summons can be given to a specific person, even in the course of the investigation initiated against another person;

In the context of the summons, the attorney of the taxpayer will be allowed to be present within a visible distance, but outside of the normal ranges.

Courts generally do not participate at the summons level of the investigations except in rare circumstances such as intent, intimidation, duress, or unreasonable pressure.

Although the Assessee submits all the documentation to the officer, as stated in the summons document, the tax payer must attend the summons.

### **When can a summon be issued under GST?**

Under GST law, section 70 of the CGST Act, 2017 empowers the GST officers to summon any person to appear before them, if the same is necessary in the course of an inquiry to record statements or produce any documents. Such persons summoned by the GST officers are duty bound to appear before the officers.

Section 70 contains two sub-sections and is very brief but in so far investigation by the department is concerned, it plays a vital or indispensable role.

In the absence of the power to compel attendance of persons or production of documents, investigations cannot be undertaken in tax cases involving documents, records, accounts and books handled by specific individuals in the premises of the person against whom the probe is launched.

Section 70 empowers the proper officer to summon any person whose attendance he considers necessary either to give evidence or produce document or any other thing.

The power is exercisable only by the proper officer as specified.

The proper officer for issuance of summons is Superintendent as per CBIC Circular No. 3/3/2017 dated 5-7-2017.

The Gujarat High Court in **Yasho Industries Ltd. v. Union of India [2021] 127 taxmann.com 781 (Guj.)** has held that it clearly emerges from section 70 that proper officer has power to summon any person whose attendance he considers necessary either to give evidence or to produce documents in any inquiry.

‘Proper officer’ in relation to any function to be performed under CGST Act means Commissioner or Officer of Central Tax, who is assigned that function by Commissioner in Central Board of Excise and Customs (CBIC).

Respondent in instant case was an officer of Directorate General of Goods and Services Tax Intelligence (DGGI) holding designation of Senior Intelligence Officer, who was appointed as

Central Tax Officer with all powers under CGST Act and **IGST Act** and Rules made there under, as are exercisable by Central Tax Officers of corresponding rank of Superintendent as specified in CBEC **Notification No. 14 of 2017-Central Tax dated 1-7-2017**.

Further, respondent being officer of Central Tax and Superintendent under CGST Act was also assigned powers of proper officer by Board vide Circular dated 5-7-2017.

Therefore, respondent, officer of DGGI was proper officer in relation to function to be performed under CGST Act as contemplated under section 2(91), and as such, was entitled to issue summons under section 70, in connection with inquiry initiated against petitioner.

### **Section 70 - Power to summon persons to give evidence and produce documents**

(1) 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.

(2) 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.

#### **As per Section 70 of the CGST Act and SGST Acts,**

*70. (1) 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.*

*(2) 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.*  
Section 108 of the Customs Act reads as:

**SECTION 108 . Power to summon persons to give evidence and produce documents. –(1)**  
*Any Gazetted Officer of customs 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 which such officer is making under this Act.*

*(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.*

*(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:*

**Provided** that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

**Section 14 of the Central Excise Act**, which was applicable to Service Tax also read as:

*Section 14. Power to summon persons to give evidence and produce documents in inquiries under this Act. -*

(1) Any Central Excise Officer duly empowered by the Central Government in this behalf, 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 which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

*Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this Section.*

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860 (45 of 1860).

Comparison of the provisions under these statutes -

	Customs	Excise/Service Tax	GST
Officer -Who can summon?	Any Gazetted Officer of customs	Any Central Excise Officer duly empowered by the Central Government	The proper officer
Person-Who can be summoned?	any person whose attendance he (the officer) considers necessary	any person whose attendance he (the officer) considers necessary	any person whose attendance he considers necessary
Purpose of Summons	either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act	either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act.	either to give evidence or to produce a document or any other thing in any inquiry
Duties and Obligations of the person summoned	All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:	All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:	All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:
Inquiry Status	Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860	Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860	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

## INQUIRY DEEMED TO BE JUDICIAL PROCEEDINGS AS PER IPC

The purpose of summoning may be to either record evidence from such person or to compel or require him to produce document or any other thing which may include books of account, ledgers, invoices, bills, vouchers, balance sheet, profit and loss account, annual report, delivery challans, bills of supply, purchase orders, credit notes and debit notes.

The provision uses the term “inquiry” and it connotes the process of investigation which is mostly in suspected cases of tax evasion or mis-classification or wrong availment of input tax credit.

Such inquiry is deemed to be “judicial proceeding” as per Section 193 and Section 228 of Indian Penal Code (IPC). Section 2(1) of Cr. P. C. defines “judicial proceedings” as including any proceeding in the course of which evidence is or may be legally taken on oath.

**Section 193 of IPC provides for punishment for giving false evidence in judicial proceedings. The punishment prescribed is imprisonment for a period upto seven years and fine.**

**Section 228 of IPC prescribes punishment of imprisonment upto six months and/or fine for the offence of interruption of public servant sitting in judicial proceeding.**

*“Inquiry” is to be distinguished from “enquiry” as the former means investigation while the latter connotes information seeking of general nature.*

### **APPLICABILITY OF PROVISIONS OF CPC**

Sub-section (1) of Section 70 makes the provisions of Code of Civil Procedure, 1908 (CPC) relating to civil court applicable to the manner in which such proceedings are conducted by the GST department.

Sections 27 to 32 and Order V of CPC provides for mode of service, etc. By conferring the powers of civil court, the GST department can compel attendance. As per CPC, there are certain exceptions like a person unable to attend because of sickness or infirmity or a civil or military officer who cannot attend without detriment to public service.

In old regime, the Superintendent is the proper officer to issue summons and this means all the officers of and above the rank of Superintendent are ‘empowered’ to issue summons.

Summons were issued routinely, regularly, some called it purposelessly, unaccountably and usually to harass and subdue, but there had to be a purpose at least on paper and that used to be -

1. in any inquiry which such officer is making under this Act – for Customs
2. in any inquiry which such officer is making for any of the purposes of this Act.

For Customs, it was any inquiry and for Excise and Service Tax, it was any inquiry for any of the purposes of the Act .



Now under GST, it is any inquiry, that means the GST officer can summon anyone for any inquiry. But there is a speed breaker. Under GST, the power to summon is in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

*It is not mutatis-mutandis, but same manner Under ORDER V of the CPC,*

1. Summons –

(1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Should a suit be instituted to issue summons under GST?

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear -

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

As per Section 122(3)(d) of the GST Act, " Any person who— fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry; shall be liable to a penalty which may extend to twenty-five thousand rupees ." So, if you don't honor the summons, you are liable to a penalty which may extend to 25,000 rupees. *It is not clear as to who will decide the extent of the penalty. Can you choose between attending and paying penalty?*

**The Indian Penal Code, Section 175 stipulates that:**

Omission to produce document to public servant by person legally bound to produce it.- Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

Is Section 175 applicable to the summons under GST, especially when there is a provision Section 122(3)(d) in the GST Act? Will this specific provision eclipse the general provision? And in any case Section 175 of the IPC is not mentioned in Section 70 of the GST Act where two other sections 193 and section 228 of the Indian Penal Code are specifically and threateningly mentioned. These two IPC sections will invariably be mentioned in the summons to be issued by the GST officers to perhaps intimidate the summoned persons and to remind them that the inquiry is "judicial proceedings".

**Section 193 only says,** "Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;"

**And Section 228 stipulates,** "Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding,

shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

So, the GST Officer is similar to a Civil Court in his power to summon and his inquiry is deemed to be "*judicial proceedings*" **only for false evidence and intentional insult**. Otherwise he is just a powerful officer, just like any other officer.

#### **Power To Summon U/s 70 CGST Act To Summon And Give Evidence:**

As per Section 70(1) of CGST Act, the Proper Officer (as per CBEC Circular dt.5.7.2017, the Superintendent is designated (PO) shall have the power to summon any person whose presence is necessary to

(i) give evidence

(ii) produce documents

(iii) or any other things necessary for the purpose of any inquiry.

#### **The DB Gujarat High Court in Paresh Nathalal Chauhan vs. the State of Gujarat – MANU/GJ/3478/2019, has explained the scope of Section 70 of CGST Act.**

As rightly pointed out by the learned amicus curiae, the only power to record statements is traceable to section 70 of the GST Acts which requires the concerned officer to issue summons to the person whose statement is sought to be recorded by following the due procedure in accordance with the law, and thereafter record his statement.

Moreover, as is evident from the contents of the panchnama, the members of the petitioner's family were literally under house arrest and were not permitted to leave the premises without the permission of the authorized officer and at times without being escorted by a member of the search party. It may be noted that there is no provision under the GST Acts which empowers the authorized officer to confine family members of a dealer in this manner and to interrogate them at all times of the day and even late at night as has been done in this case. Even the elderly lady was not spared and despite not being well was interrogated at night, that too, without any such powers being vested in the authorized officer.

**As rightly pointed out by the learned amicus curiae, the only power to record statements is traceable to section 70 of the GST Acts which requires the concerned officer to issue summons to the person whose statement is sought to be recorded by following the due procedure in accordance with the law, and thereafter record his statement.**

In order that statements could be relied upon in any adjudication proceedings, the statement should be voluntary. If it appears to be by inducement, threat, or coercion, it has to be held to be inadmissible as has been held by Supreme Court in **KTMS MohdVs. UOI AIR 1992 SC 1831**.

Further, confession has to be affirmatively proved to be free and voluntary as has been held **Hem Raj Vs. State of Ajmer AIR 1954 SC 462**. Confession, before could be relied upon, must be

established to have been made voluntarily and true as has been held in **Mahabir Biswas Vs. State of WB 1995(2) SCC 25.**

In-**State of Haryana Vs. Rajinder Singh 90 ELT 241**, it was held that the statement must be voluntary and true.

During summoning of persons, statements are recorded by the investigating authorities – more often, as sorts of torture, undue pressure, the threat of arrest or mental agony is inflicted, to extort or “procure” the statements by the Departmental authorities.

*In law, such statements so made before the PO are admissible in evidence as the PO is not Police Officer.*

#### **Whether Cross-Examination of Witness Is Mandatory Under CGST Act.**

At this stage, I would like to bring place on record that there is a little difference in Section 9D of Central Excise Act and Section 136 of CGST Act as in Section 9D (2), it has been provided that **examination and cross-examination** shall apply to any proceedings under Central Excise Act, which is missing in Section 136 of CGST Act and, therefore the question arises as to whether statements recorded under Section 70 shall have to be taken as gospel truth (injeel truth) without being put to test of cross-examination.

In this reference, the Hon'ble Supreme Court in **Andaman Timber Industries Vs. CCE: MANU/SC/1250/2015** has held that if cross-examination is not allowed, it amounts to a violation of the principle of natural justice and, therefore, held as under:-

Not allowing the Assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to a violation of principles of natural justice

The Tribunal in **Bussa Overseas Properties Ltd.-MANU/CM/0665/2002** has held that the adjudicating authority is bound by general principles of evidence. This decision stands affirmed by the Hon'ble Apex Court reported as 2007 (216) ELT 659 (SC). He also relied upon the decision in **Nazir Ahmed vs. King-Emperor, MANU/PR/0111/1936: AIR 1936 PC 253** and in the case of **State of U.P. vs. Singhara Singh, MANU/SC/0082/1963.**

In Indirect Tax cases, it will be pertinent to refer to **Section 138 of the Evidence Act** which provides:

“138. Order of examinations.-

Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must **relate to relevant facts** but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The Karnataka High Court in **Sharadamma vs. Kenchamma and Ors.: MANU/KA/8690/2006**, has held that any witness before being put to cross-examination, there has to be examination-in-chief.

Under Section 138 of the Indian Evidence Act, cross-examination follows chief-examination, but not without chief-examination.

If there is no chief-examination, there is no cross-examination. It is the only witness who is examined in chief who can be cross-examined. Therefore, a prayer for cross-examination of the Plaintiff even when the Plaintiff has not been examined in chief is ridiculous and not provided for under Section 138 of the Evidence Act.

The observations of Tribunal in **CCE Vs. Kuber Tobacco India Ltd. and Ors.: MANU/CE/0146/2016** in this extremely relevant.

The main contention of the appellant is that the deponents whose statements have been relied upon by the adjudicating authority were not put to examination-in-chief before providing an opportunity of cross-examination. A plain reading of sub-section (1) of section 9D makes it clear that clauses (a) and (b) of the said sub-section set out the circumstances in which a statement, made and signed by a person before the Central Excise Officer of a gazetted rank, during the course of an inquiry or proceeding under the Act, shall be relevant, for the purpose of proving the truth of the facts contained therein. Therefore, there is no doubt about the legal position that the procedure prescribed in sub-section (1) of section 9D is required to be scrupulously followed, as much as in adjudication proceedings as in criminal proceedings relating to the prosecution

The Hon'ble Karnataka High Court has relied upon Section 9D(1) which is still part of Section 136 of the CGST Act and, therefore, the **ratio of the judgment of Hon'ble Karnataka High Court shall apply with full virulence.**

The DB of Delhi High Court in **Basudev Garg Vs. CCE: MANU/DE/1876/2013**, has held while relying upon the observations of the Supreme Court as contained in **Swadeshi Polytext Ltd. (2000) 122 ELT 641 (SC)** and **Laxman Exports Ltd. MANU/SC/0548/2002**, as the general propositions, there can be no denying that when any statement is used against the assessee, an opportunity of cross-examining the persons who made those statements ought to be given to the assessee.

The DB of Delhi High Court in **J and K Cigarettes Ltd. Vs. UOI: MANU/DE/2136/2009** observed that "Going by this nature of the proceedings, which can entail civil and/or evil consequences to the show-cause notices, submission of learned Counsel for the petitioner was that the right of the accused to cross-examine persons, whose statements are relied upon against him, is a very important facet of the principles of natural justice.

Normally, the rule is that if the witness is not cross-examined, then the examination-in-chief/statement of that witness cannot be termed as evidence and, therefore, cannot be read in evidence. He submitted that necessity of allowing cross-examination of the witnesses in departmental adjudication proceedings is well-settled and accepted, as is clear from the following decisions:

- (i) Arya Abhushan Bhandar v. Union of India MANU/SC/0552/2002:
- (ii) Gyanchand Sant Lal Jain v. Union of India 2001 (136) ELT 9 (Bombay High Court)
- (iii) Kellogg India Pvt. Ltd. & Madhukar Patil v. UOI MANU/MH/0802/2005 (Bombay High Court)
- (iv) Ripen Kumar v. Deptt. of Customs 2003 (160) ELT 60 (Delhi High Court)
- (v) New Decent Footwear Industries v. UOI MANU/DE/0821/2002 (Delhi High Court)

**The DB of Gujarat High Court in the case of CC Vs. Motabhai Iron & Steel Industries MANU/GJ/1223/2014** where it has been held that “no reliance can be placed on the statement of such witnesses who has not subjected himself to cross-examination by the affected party.

The cross-examination is an extremely relevant tool in the hands of the assessee to counter the case of the Department as, as said earlier, the statements are, on most of the occasions, are not voluntary and, therefore, to bring the truth on records, their cross-examination is absolutely indispensable.

#### **DETAILS AVAILABLE WITH DEPARTMENT – SUMMONS NOT TO BE ISSUED**

If all details are available with the department, the issue of summons to officers of the company or other persons may not be necessary. **The Gujarat High Court in A.S. Corporation v. Union of India**” imposed costs and issued a direction that the petitioner assessee shall not be issued any further summons in relation to the same subject matter, unless and until the respondent department is in possession of any specific evidence requiring the presence of the partners of the petitioner firm after coming across such evidence pursuant to inquiries/investigations.

#### **PRESENCE OF SENIOR OFFICERS NOT NECESSARY ALWAYS**

CBIC in Frequently Asked Questions (FAQs) on GST dated 15-12-2018 (3rd edition) has instructed that **summons is to be issued as a last resort where assessee’s are not cooperating and this provision should not be used for the top management.**

It further directs that senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance, and they should be summoned only when there are indications in the investigation

of their involvement in the decision making process which led to loss of revenue. As per these instructions, authorized representative can attend when summons is issued.

**Where revenue issued summons on senior officers** of assessee-company to answer queries of Director General of GST (Intelligence), **assessee was directed to intimate about officers concerned who were familiar with records** and thereupon Director General of GST (Intelligence) shall fix a convenient date with them in connection with investigation – Gail Gas Ltd. v. Directorate General of GST Intelligence [2018] 100 taxmann.com 242 (Delhi).

### **APPEARANCE THROUGH VIDEO CONFERENCING**

Where assessee was residing at Bengaluru and GST Authority posted at New Delhi summoned assessee requiring him to tender his statement and present evidence before him and the assessee requested High Court that he be allowed to appear through video conferencing because travelling from Bengaluru to New Delhi would be a risk factor for him of contracting COVID-19, it was held that **mere apprehension of contracting COVID-19 would not persuade Court to grant relief sought for by the assessee** – P.V.Rao v. Senior Intelligence Officer, Directorate General of GST Intelligence [2021] 123 taxmann.com 201 (Delhi)

Where assessee carried on business at Mumbai and Jaipur and he filed writ petition challenging an enquiry initiated by Authority of Mumbai and contended that he was already being subjected to enquiry by Central GST Authorities at Jaipur and two enquiries under same subject were without jurisdiction, since assessee had taken registration in Mumbai, he was subject to jurisdiction of Mumbai Authorities. Court held that **no interference with investigation by Authority of Mumbai was warranted.** – Shafi Khan Khokhar v. State of Maharashtra [2019] 102 taxmann.com 191 (Bom.)

### **STATEMENT GIVEN UNDER SUMMON PROCEEDINGS**

As per section 25 and 26 of the Indian Evidence Act 1872, confessional statement given before a police officer is inadmissible and holds no value. Now the moot question is whether GST Officer shall be considered a police officer for the purpose of CGST Act.

Honble **Telengana High Court in the case of P V Ramama Reddy V UOI (2019)** 104 taxmann.com 407 has held that GST Officers are not police officer to whom section 25 of the Indian Evidence Act 1872 would apply.

Under the erstwhile regime some jurisprudence has evolved as to whether an officer under a revenue law could exercise the power of a police officer.

Honble Apex Court in the case of **State of Punjab Vrs Barkat Ram AIR 1962 SC 276** has held that Custom Officer cannot be equated with a police officer.

Further constitution bench of Honble Apex Court in the case of **Soni Ballav das Liladhar Vrs Asst Collector of Customs AIR 1965 SC481** reiterated the same position that custom officers are not police officers and accordingly statement made to them are not inadmissible under section 25 of Indian Evidence Act.

Similar view was taken again by Hon'ble Apex Court in the case of **Ilias Vrs The Collector of Customs AIR 1970 SC 1065** and ruled that Central Excise Officer are not police officer and he do not have power to submit a charge sheet u/s 173 of CRPC.

The statement so recorded during summon is relevant only for prosecution in an offence. Meaning thereby, section 136 cannot be invoked for other purposes like making assessment, adjudication, penalty proceedings etc.

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