

MONTHLY NEWSLETTER

GST TRACKER

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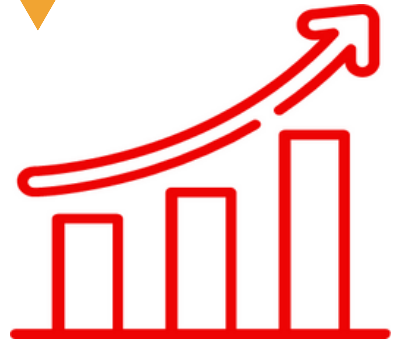


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Why are people afraid of Summons under GST?

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CS Payal Kataria

Let's first read Section 70 which deals with Summons under GST.

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 (5 of 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 (45 of 1860).

Applicability of provisions of Indian Penal Code (45 of 1860) (in short "IPC") make people afraid of the Word SUMMON.

Let's read Section 193 of IPC

193. Punishment for false evidence.—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 whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation-1: A trial before a Court-martial; *** is a judicial proceeding.

Explanation-2: An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation-3: An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

As per section 70(2) of GST Act 2017 “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 (45 of 1860).”

Thus inquiry as per section 70 is considered as judicial proceeding and implications are governed by IPC. Fear of imprisonment under section 193 cause afraid. To protect the bonafide persons, The CBIC vide Instruction No. 03/2022-23 (GST-Investigation) dated August 17, 2022 has issued guidelines on the issuance of Summons under section 70 of the Central Goods & Services Tax Act, 2017 (“the CGST Act”).

Below are guidelines:

- (i) Power to issue summons are generally exercised by Superintendents, though higher officers may also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.
- (ii) Where for operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity.
- (iii) In all cases, where summons are issued, the officer issuing summons should record in file about appearance/ non-appearance of the summoned person and place a copy of statement recorded in file.

- (iv) Summons should normally indicate the name of the offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation, so that the recipient of summons has prima-facie understanding as whether he has been summoned as an accused, co accused or as witness
- (v) Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.
- (vi) Senior management officials such as CMD/ MD/ CEO/ CFO/ similar officers of any company or a PSU should not generally be issued summons in the first instance. They should be summoned when there are clear indications in the investigation of their involvement in the decision making process which led to loss of revenue.
- (vii) Attention is also invited to Board's Circular No. 122/41/2019-GST dated November 05, 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Format of summons has been prescribed under Board's Circular No. 128/47/2019-GST dated December 23, 2019.
- (viii) The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.
- (ix) All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons. The exemption so available to these persons under Section 132 and 133 of CPC, may be kept in consideration while investigating the case.

(x) Issuance of repeated summons without ensuring service of the summons must be avoided. Sometimes it may so happen that summoned person does not join investigations even after being repeatedly summoned. In such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate alleging that the accused has committed offence under Sections 172 of Indian Penal Code (absconding to avoid service of summons or other proceedings) and/or 174 of Indian Penal Code (non-attendance in obedience to an order from public servant), as inquiry under Section 70 of CGST Act has been deemed to be a “judicial proceedings” within the meaning of Section 193 and Section 228 of the Indian Penal Code. Before filing such complaints, it must be ensured that summons have adequately been served upon the intended person in accordance with Section 169 of the CGST Act. However, this does not bar to issue further summons to the said person under Section 70 of the Act.

Any person to whom Summon is issued must mind the section 228 IPC and respectfully cooperate with the proper officer during all stages of judicial proceeding.

228. Intentional insult or interruption to public servant sitting in judicial proceeding.—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.

GSTN Updates August 2022

Date	Subject
02.08.2022	Introducing Single Click Nil Filing of GSTR-1

Source: www.gst.gov.in

Notifications/Circulars/Orders issued in the month of August 2022

Central Tax Notifications August 2022

No.	Date	Subject
17/2022	01.08.2022	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Cr from 01st October, 2022.

Central Tax (Rate) Notification August 2022

No Central Tax (Rate) Notification was issued in the month of August 2022

Integrated Tax Notification August 2022

No Integrated Tax Notification was issued in the month of August 2022

Integrated Tax (Rate) Notification August 2022

No Integrated Tax (Rate) Notification was issued in the month of August 2022

Circular issued in the month of August 2022

No.	Date	Subject
177/09/2022	03.08.2022	Clarifications regarding applicable GST rates & exemptions on certain services
178/10/2022	03.08.2022	GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law
179/11/2022	03.08.2022	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th – 29th June, 2022 at Chandigarh

Orders

No order was issued in the month of August 2022

Removal of Difficulty Orders August 2022

No order was issued in the month of August 2022

Source: www.cbic.gov.in

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Videos available

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ANDHRA PRADESH HIGH COURT

**Refund Rejected, due to
Limitation Period?**

M/S. VYPLAVI GRANITES
Vs
THE DEPUTY COMMISSIONER OF CENTRAL TAX, THE CHIEF
COMMISSIONER OF CUSTOMS, UNION OF INDIA, GOODS AND
SERVICE TAX COUNCIL

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ALLAHBAD HIGH COURT

**GST Registration Rejected
Cost of Rs 15000 imposed on
erring Officers**

Ranjana Singh
Vs
Commissioner Of State Tax And 2 Others

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**GST Registration cancelled?
Gujarat High Court decide case
in favour of Taxpayer**

***MUST
Watch!***

Agarwal dying and printing works
Vs
State of Gujarat and (2)others

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GST AT ONE PLACE

MADRAS HIGH COURT

**E way Bill: Goods detained, Movement of Goods
from Principal Place to additional Place**

M/S. SMART ROOFING PRIVATE LIMITED
Vs
THE STATE TAX OFFICER (INT) , MADURAI

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PKA Consultants