

Guidelines on issuance of summons under the CGST Act- CBIC

22 August 2022



Summary:

The Central Board of Indirect Taxes & Customs (CBIC) has issued guidelines¹ on the issuance of summons under the Central Goods and Services Tax (CGST) Act. The Goods and Service Tax (GST) investigation wing has advised the officers to see the viability of issuing a letter of requisition of information instead of directly resorting to summons. It emphasised that the officers should use the power of issuance of summons diligently. Also, the issuance of a summons should be avoided to call upon the statutory records which are already available on the GST portal. Further, to bring transparency and accountability, the summon should have a Document Identification Number (DIN).

The CBIC noticed that the field formations/ officers have issued summons² to the top officials of companies in routine matters to call for material evidence/documents. Even the statutory records which are already available online on the GST portal have been sought by issuing summons. In this regard, the CBIC stated that the summon is one of the instruments available with the Department to seek information/documents from any person to evaluate tax evasion. However, the power to issue summons must be exercised judiciously and with due consideration. Further, the officers should see the viability of issuing a letter of requisition of information instead of resorting to the summons.

The CBIC has issued fresh guidelines as below, which must be followed in investigation matters under CGST:

- i. Summons should be issued by the Superintendents after obtaining prior written approval from the officers not below the rank of Deputy/ Assistant Commissioner. The reasons for issuance of summons to be recorded in writing. If it is not possible to obtain prior written permission, oral /telephonic permission must be taken however, records of the same should be in writing.
- ii. The officer should maintain record of appearance/ non-appearance of the summoned person and place a copy of statement recorded in file.
- iii. The name of the offender(s) should be indicated on the summon, to provide understanding to the recipient of summons as to whether he has summoned as an accused, co-accused or as witness. However, disclosure of his name should not be detrimental to the cause of investigation.
- iv. Summons may not be issued to seek the statutory documents which are digitally/ online available in the GST portal.
- v. The Senior management officials³ of any company or a PSU should not generally be issued summons in the first instance. However, they should be summoned if there are clear indications of their involvement in the decision-making process, which led to loss of revenue.
- vi. As mandated vide the circular⁴ issued by the CBIC, DIN must be generated and quoted on all communication issued by the CBIC officers to taxpayers and other concerned

¹ Instruction No. 03/2022-23 (GST-Investigation) dated 17 August 2022

² Under Section 70 CGST Act 2017.

³ such as CMD/ MD/ CEO/ CFO/ similar officers

⁴ 122/41/2019-GST dated 5 November 2019

persons for the purpose of investigation. Further the department shall follow the prescribed⁵ format of summons.

- vii. The summoning officer must be present at the time and date for which summons is issued. In case of any emergency, the summoned person must be informed in advance in writing or orally.
- viii. All summoned persons are bound to appear before the concerned officers, except the women who do not by tradition appear in public or privileged persons.
- ix. Without ensuring service of summons, issuance of repeated summons must be avoided. In case the person does not join the investigation, after giving reasonable opportunity⁶, a complaint should be filed against him with the jurisdictional magistrate. However, before filing complaints, it must be ensured that summons have adequately been served upon the intended person⁷. Further, it does not bar to issue further summons to the said person⁸.

⁵ Circular No. 128/47/2019-GST dated 23 December 2019.

⁶ Generally, three summons at reasonable intervals

⁷ in accordance with Section 169 of the CGST Act

⁸ Under Section 70 of the CGST Act

Our comments:

Earlier, the CBIC stated that the summon is to be issued as a last resort where the assessee is not cooperating, and this section should not be used to the top management. Thus, the summons should not be issued in a casual manner. Further, the language used in summons should not be harsh to cause unnecessary stress and embarrassment to the taxpayer.

However, it has been noticed that the Department has caused undue harassment on the honest and bonafide taxpayers. Hence, the taxpayers must be aware of their rights to safeguard themselves from unnecessary harassment from the officers.

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