

TAX INFO

Dated 19/08/2022

Latest update on GST Law: **Instruction No. 03/2022-23 (GST-Investigation) dated 17th August, 2022.**

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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 CGST Act.

The issuing of summons is one of the instruments with the Department to obtain information or documents or statement from any person to find out the evasion of the tax etc., however, it needs to be ensured that exercise of such power is done judiciously and with due consideration.

Officers are also advised to explore instances when instead of resorting to summons, a letter for requisition of information may suffice.

The Board desires that the following guidelines must be followed in matters related to investigation under CGST:

- (i) 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 done in writing at the earliest opportunity.
- (iii) In all cases, where summons is 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 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 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 of their involvement in the decision-making process which led to loss of revenue.
- (vii) Quoting of Document Identification Number (DIN) is mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation.
- (viii) The summoning officer must be present at the time and date for which summons is issued.
- (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.
- (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". Before filing such complaints, it must be ensured that summons have adequately been served upon the intended person.

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