

Summons under GST

December 22, 2020 | [\[2020\] 122 taxmann.com 193 \(Article\)](#)



Rajender Arora

CA Managing
Partner-Spark &
Associates



Yugal Goyal

CA Prop Yugal
Goyal and
Associates

Introduction: This article briefs the reader about power to summon persons to give evidence and produce documents under GST. The power to issue summons is very wide power with the proper officer ('PO') provided under Section 70 of Central Goods and Services Tax ('CGST Act' or 'Act'), 2017.

Section 70 of the CGST At, 2017:

- (1) The PO 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 ('CPC')*.
- (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 ('IPC').

Interpretation:

During the course of any inquiry under this Act, PO may summon any person, to appear before him and give evidence or produce documents. The person to whom such summon has been issued is duty bound to appear before the officer and bound to tender evidence. He is also bound to produce all documents which were required to be furnished.

However, in addition to above, the summons can be issued for giving evidence by way of statement on oath. Such statements are used for further investigation but only after they pass the test provided under Section [136](#) of CGST Act, 2017.

Section 70 talks about the power of PO to summon person and demand evidences during the course of any *inquiry*. The word 'inquiry' is having a thin line difference with the term 'enquiry'. The dictionary meaning of both the terms is as under:

Enquiry is used for the general sense of 'an act of asking for information' while inquiry is reserved for the meaning 'a formal investigation'.

The aforesaid section states about the term "inquiry" which provided the more formal sort of investigation as interpreted from the dictionary meaning.

Who is the Proper Officer ('PO')?

Section [2\(91\)](#) of the CGST Act, 2017, states "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.

As per [Circular No. 3/3/2017-GST dated July 05, 2017](#), Superintendent of Central Tax and above is the PO under sub-section (1) of Section 70 of the CGST Act.

Can summons be issued to persons outside the territorial jurisdiction?

Example: Can a PO of Delhi issue summons to a person in Haryana?

Answer: Yes, PO of Delhi can issue summons to a person in Haryana. But he has to follow the procedure as provided under Section 28 of CPC i.e. *Service of summons where defendant resides in another state*. The said section provides summons may be sent for service in another state to such court and in such manner as prescribed by the rules in force in that state.

Further, it has been provided that where the language of the summons sent for service to another state is different from the language from where the said summons is sent, a translation, in Hindi or English shall also be sent together.

It means the PO of Delhi needs to sent summons to Jurisdictional Officer (JO) of such assessee in Haryana and then, such JO will send such summons to such assessee.

Judicial Proceeding:

As per Section 70(2) of the CGST Act, any inquiry referred to in Section 70 (1) of the Act shall be deemed to be a "*judicial proceedings*" within the meaning of **Section 193 and Section 228** of the IPC.

Section 193 of IPC: **Punishment for false evidence**

- Whoever intentionally gives false evidence in any stage 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 an *imprisonment of 0-7 years and fine*.

Section 228 of IPC: **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 an *imprisonment of 0-6 months or fine of up to Rs. 1,000 or with both.*

Section 136 of CGST Act, 2017: Relevancy of statements under certain circumstances

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in *any prosecution for an offence* under this Act, the truth of the facts which it contains -

(a) when the person who made the statement is

1. dead or
2. cannot be found, or
3. incapable of giving evidence, or
4. kept out of the way by the adverse party, or
5. whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable;

Or

(b) when the person who made the statement is examined as a witness in the case before the court and *the court is of the opinion* that, having regard to the circumstances of the case, the statement *should be admitted in evidence in the interest of justice.*

As explained on above paras, this section dealt with relevancy and admissibility of statements made and signed in response to the summons issued under section 70 during the course of any inquiry or proceedings under this Act.

If the PO wants to invoke clause (a) of Section 136, he will have to pass a speaking order to the effect that he is satisfied that any of the 5 circumstances exist and he is thus straight away relying upon the statement of the maker without first examining him as witness.

But, if PO wants to invoke clause (b) of Section 136 and wants to treat the statement as 'relevant' and 'admissible' under the law, the person is not only required to be present in the proceedings before the adjudicating authority but the PO is also obliged under the law to examine him and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

Responsibilities of the person so summoned: [Source: CBIC FAQ's]

A person who is summoned, legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.

Consequences of non-appearance to summons: [Source: CBIC FAQ's]

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.

Further, in case he gives false evidence, he can be prosecuted under **Section 193** of the IPC. In addition, if a person does not appear before a CGST/ SGST officer who has issued the summon, he is liable to a penalty upto 25,000 under Section 122(3)(d) of the CGST Act. (General penalty)

Authors' comments:

As per author view, if the person doesn't appear when summoned, the person cannot be prosecuted under Section 172 or 174 or 175 of IPC. Since, as per Section 70(2) of the Act, any inquiry shall be deemed to be a "*judicial proceedings*" within the meaning of **Section 193 and Section 228** only of the IPC. Accordingly, any other Section of IPC (i.e. Section 172 or 174 or 175) as provided under CBIC FAQ's will not be applicable.

Further, for levying penalty for non- appearance to summons, the PO has to issue a Show Cause Notice under Section [73](#) or [74](#) of the CGST Act.

Guidelines for issue of summons: [Source: CBIC FAQ's and F. No. 207/07/2014-CX-6 dated January 20, 2015]

The CBIC in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

1. Summon 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;
2. The language of the summons should *not be harsh and legal* which causes unnecessary mental stress and embarrassment to the receiver;
3. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;

4. 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;
5. In all cases, where summons is issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;
6. 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*. 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.

Precautions to be observed while issuing summons [Source: CBIC FAQ's]:

The following precautions should generally be observed when summoning a person: -

- (a) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised *only* when there is an inquiry being undertaken and the attendance of the person is *considered necessary*.
- (b) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.
- (c) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very *consciously as a matter of strategy*.
- (d) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

Precautions to be taken while giving statements [Author's view]:

- (a) Ensure that before signing on recorded statement, the person asks to allow to read statement before signing it. Only after confirming that favourable aspects are also recorded and the recording is genuine sign it.
- (b) The person being summoned has the right to ask a copy of the statement being recorded. Ask for copy of statement, before signing it.
- (c) Statement should be in writing and signed by the maker, as it safeguards interests of the maker as well as departments.
- (d) If copy of signed statement was asked but not given, then soon after coming out of the room, he should write down all the questions and answers when fresh in his mind.
- (e) Further, for the purpose of record, he could immediately send in writing a letter requesting copy of statement through registered post.
- (f) The statement is legally binding once given unless it is retracted or additional information provided immediately thereafter.

Time period for which documents and evidences can be demanded by PO by issuance of summons [Author's view]:

The CGST Act does not provide any time period specifically up to what time period the PO can demand the documents and evidences from any person. But, Section 36 of the CGST Act provides that every registered person needs to maintain books of account or other records for a period of 72 months (i.e., 6 years) from the *due date* of furnishing of annual return for the year pertaining to such accounts and records. Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later. Accordingly, we may conclude that the PO may demand the documents and evidences from any person maximum up to a period of 72 months from the due date of filing the annual return.

Conclusion

Summons are the medium to seek information, documents and other things under this law. This Process provided to the administration should be diligently utilised. As it is amply clear from the present trend that issuing summons is the routine than exception, on the other hand it should be vice versa. It should not be made as a tool to disturb the normal functioning of the taxpayer when top management is summoned and waiting hours are extended intentionally, which is leading to gap between taxpayers and administration.

Authors can be reached at: gstrajender@ca-spark.com and cayugalgoyal@gmail.com

■ ■