

GST SOP for Summons

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It was recently reported that:

The Central Board of Indirect Taxes and Customs (CBIC) will soon come out with a detailed standard operating procedure (SOP) for serving summons and notices under the goods and services tax (GST) regime, to prevent harassment of businesses.

The first weapon in an investigator's armoury is the much misused summons. Normally the summoned person is picked up, taken to the office, then given summons to come to the office, his voluntary statement recorded and then arrested. Most summons would require the person to attend on the same date as the date of summons. This would clearly prove that the summoned person was under the illegal custody of the officer summoning him.

The Karnataka High Court in [2004-TIOL-34-HC-KAR-NDPS](#) held that D.R.I. was entitled to interrogate the accused u/s. 67 but cannot insist accused to give evidence as called upon in the summons. **Therefore the summons issued is illegal and bad in law.**

A voluntary statement by definition is an oxymoron. Nobody would give that kind of statement if he is not mad and if he is mad that statement has no relevance. It is unfortunate that the law does not recognise the simple fact of life that no normal person could come willingly to the office to give a willing voluntary statement to sign his death warrant. Behind every statement lies a long and tortuous story of harassment, ill-treatment, indignity, threat, inducement, and sometime neat and plain third degree. Most often the statements are dictated by the officers and the persons are made to write them down in long shabby hand writing to establish more credibility.

Is it proper to base a case on such an illogical, ill-gotten statement?

Summons to top executives

The DGGI had in a letter F. No.: 301/INT/DGGI/HQ/2020, dated 14.08.2020, instructed the officers:

- As an enforcement agency, it is imperative for the DGGI to maintain a balance wherein investigations should proceed strictly, as per law, while simultaneously ensuring that no excesses are meted out to the taxpayers and their sensibilities are respected.
- A summons for personal appearance should only be issued when specifically required and such summons should not be issued repeatedly. Officers should record comprehensive statements in the first instance itself.
- Senior management officials such as CEO, CFO, general managers of a large company or PSU should not generally be issued summons at the first instance unless the evidence suggests otherwise.
- The officers should be sensitive towards the assessee or party and special attention should be given to elderly, women and children present in the premises under search.
- Children should be allowed to go to school, after examining their bags.

- A woman occupying any premises, to be searched, has the right to withdraw before the search party enters, if according to the customs she does not appear in public.

- If a person in the premises is not well, a medical practitioner may be called. Religious sentiments of the person under search should not be hurt in any way.

Very lofty indeed!

CBEC had in Circular [F.No 208/122/89-CX.6](#) dated 13.10.1989 observed,

Complaints have been received from the trade that in some of the Collectorates summons under Section 14 of the Central Excises and Salt Act, 1944 are being issued to the Managing Directors and other high officers with a view to enforce recovery of dues which are under dispute. Action under this section is to be taken only as a last resort in cases where assesseees are not cooperating or investigations are to be completed expeditiously. This section should not be used for harassing the top management for forcing them to pay up demands which are disputed by them. For recovery of demands normal procedure under the law should be followed.

If any instance of issue of summons to Managing Directors and other Directors without justification is noticed, a serious view will be taken by the Board. Collectors will be held personally responsible for enforcing these instructions in their charges.

That was thirty three years ago.

Fifteen years ago in [F. No. 137/39/2007-CX.4](#) dated 26.2.2007, Board has noticed that

on many occasions, merely for obtaining information or documents pertaining to service tax cases/ matters, officers of field formations or intelligence agencies resort to issuance of summons (U/s 14 of the Central Excise Act, 1944 as is made applicable in service tax cases U/s 83 of the Finance Act, 1994) to either service taxpayers or to persons who are not registered with the department.

Board has further noticed that:-

From the nature of information / documents called for, it is clear that many times such information / documents can easily be obtained by making a telephonic request or writing a simple letter to the person concerned.

Instead summons are issued in a routine manner, under the signature of superintendent or the senior intelligence officers. (SIOs). The harsh and legal language of the summons not only causes unnecessary mental stress & embarrassment and instils fear in the minds of the receiver but may also become a source of harassment or even unethical practices.

Board has taken a serious note of this practice.

So the Board directed that:-

a) For calling for information / documents, normally the mode of communication should be either in the form of a telephone call or by way of sending a simple letter;

b) Issuance of summons should be resorted to, only when the above mentioned modes of communications are found to be ineffective or are likely to jeopardize revenue interest or when it is essential to ensure personal presence of the person concerned to tender evidence or record statement in connection with a service tax evasion case;

- c) In cases mentioned under (b) above, the summons should be issued after obtaining prior written permission from an officer not below the rank of Deputy Commissioner with reasons for issuance of summons to be recorded in writing;
- d) In case, for unavoidable 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;
- e) In all cases, where summons are issued, the officer issuing summons must submit a report on proceeding that took place during the presence of the taxpayer/person summoned, and the officer authorizing issuance of summons must satisfy himself that no harassment has been caused during the visit of the person summoned to the office.

Wonderful! Yes! There is no point in summoning people when you can get the information with just a phone call.

Board stated that **Non-observance**

of these instructions would be viewed seriously. Board should do something more than viewing seriously.

All these years Board perhaps had no inclination to view the indiscriminate summons, let alone view seriously. And all these years, officers have used summons as a power to threaten and harass assesseees. The summons are menacingly and misleadingly worded to instil fear among the assesseees and the summoned persons are made to sit for hours - just to teach them a lesson.

Eight years later, Board issued another guidance in [CBEC Instruction in F. No. 207/07/2014-CX-6., Dated: January 20, 2015](#) that

senior management officials such as CEO, CFO, General Managers of a large company or a PSU 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.

Why do they repeat these circulars? Does it mean that the field officer have no respect for the instructions given by the top bosses?

The CBIC in its [GST FAQ's Third Edition](#) (15-12-2018) explained:

Q 34. What are the guidelines for issue of summons?

Ans. The Central Board of Indirect Taxes and Customs (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. summons is to be issued as a last resort where assesseees 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 are 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.

Q 35. What are the precautions to be observed while issuing summons?

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

- (i) 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.
- (ii) 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.
- (iii) 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**.
- (iv) 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.

Now they want to bring out an SOP, but who will ensure that the SOP is not flouted as the instructions were all these years?

John Doe summons

Have you heard of John Doe summons? It is issued by the US Internal Revenue Service to a third party to provide information on an unnamed, unknown taxpayer with potential tax liability.

Until Next week