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**Important issues regarding summon
under section 70 of the CGST Act, 2017**

It is an important power given to the proper officer (PO). PO can summon any person to appear before him for submission of requisite information and/or for the purpose of recording statement. PO issues the summons asking the persons to appear on specified date and time with documents asked for in the summons. As per *Central Excise Instruction bearing F.No.207/07/2014-CX-6, dated 20.01.2015*, Department has clarified that use of summons be made only as a last resort when it is required absolutely. All persons to whom summons are issued shall be bound to attend, either in person or by an authorised agent as specified in the summons. However, in the case of artificial person like a company, club etc. summons shall be attended by the authorised person only. Person, to whom the summons are served can seek adjournment if not able to attend, due to bonafide reasons. As per Board *Circular No. 65/88, dated 6-9-1988* issued under CE persons summoned should not be interrogated at odd hours. The Board vide *Central Excise Instruction bearing F.No.208/122/89-CX. 6, dated 13-10-1989* has asked the officers to exercise restraint while summoning top management staff of Companies. Summons to managing directors, directors and senior officers must be served only when assessee is not co-operating. *Central Excise Instruction bearing F.No.207/07/2014-CX-6, dated 20.01.2015* emphasised 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.

1. Service of summons

Proper Officer shall ensure that summons shall be served only by any one of the modes prescribed under section 169 of the CGST Act. In order to be legally binding and effective, summons must be properly served. However, Hon'ble the Apex Court held on 10.07.2020, while upholding that summon can be served

through social media and mail, inter alia, held as under:

“It has been brought to our notice that it was not possible to visit post offices for service of notices, summons, and pleadings. Such service of all the above may be done through email, fax, and other instant messenger services like Whatsapp and other telephone messenger services,”

2. Presence of an advocate of the person summoned

During the course of summons, the advocate of the person summoned is allowed to be present within visible distance, but beyond hearing range as has been held in the case of *Vijay Sanjani v UOI*, reported as 2017 (345) E.L.T. 323 (S.C.). It was also directed that the petitioner’s counsel should always be prepared to be present whenever the petitioners are called upon to attend the interrogation. Similarly, in *Sangit Agarwal v The Director General, Directorate of Revenue Intelligence*, reported as 2017 (356) ELT 518 (Delhi.) (HC), it was held that the authorities may permit the presence of an Advocate during interrogation of Petitioner, however he has to be within visible range but beyond hearing range and Advocate must be prepared to be present for every summons made.

3. Jurisdiction of Directorate General of GST Intelligence (DGGI), Directorate General of GST (DGGST) and Directorate General of Audit (DGA) is throughout India

DGGI, DGGST and DGA have the jurisdiction all over India. Thus, issue of jurisdiction cannot be raised if summons are received from any of the aforesaid authorities. In *Sri Ravi Aggarwal v UOI*, reported as 2019 (11) TMI 1144 - CHHATTISGARH HIGH COURT, while dismissing the writ petitions, Hon’ble High Court, inter alia, held as under:

....By virtue of the aforesaid notification issued by the Government, all the officers in the Directorate General of Goods & Services Tax Intelligence, Directorate General of Goods and Services Tax and the Directorate General of Audit, as specified in Column No. 2 of the table given therein, came to be appointed as 'Central Tax Officers', investing all the powers upon them under the CGST Act, 2017, the IGST Act, 2017 and the Rules made thereunder throughout the country of India, as are exercisable by the Central Tax Officers of the corresponding rank as specified in Column No. 3 of the said table.

4. Deposit of tax during summons without assessment

The person(s) summoned cannot be compelled to deposit the amount of tax which according to him is not payable.

Relevant Case Laws

(A) Petitioner is liable to deposit only 10% of the disputed liability in all those cases where the petitioner has the right to file an appeal to Appellate Authority

In the case of *C. Pradeep v Commissioner of GST and Central Excise Selam and another*, reported as 2019 (11) TMI 659 - SUPREME COURT, the petitioner submitted that indisputably assessment for the relevant period has not been completed by the Department so far. In which case,

invoking Section 132 of the CGST Act, 2017 does not arise. It was also submitted that that, even if, the alleged liability of Rs. 19 crores assumed by the Department was accepted, it was open to the petitioner to file appeal after passing of assessment order and as per the statutory stipulation, such appeal could be filed upon deposit of only 10% of the disputed liability. In that event, the deposit amount may not exceed 2,00,00,000/- (Rupees Two Crores), which the petitioner was willing to deposit within one week. Hon'ble Supreme Court has inter alia, held as under:

“That the petitioner shall deposit Rs. 2,00,00,000 (Rupees Two Crores) to the credit of C. No. IV/16/27/201HPU on the file of the Commissioner of GST & Central Excise, Salem, Tamil Nadu and produce receipt in that behalf in the Registry of this Court within ten days from today ay, failing which the special leave petition shall stand dismissed for non-prosecution without further reference to the Court.

For a period of one week, no coercive action be taken against the petitioner in connection with the alleged offence and the interim protection will continue upon production of receipt in the Registry about the deposit made with the Department within one week from today, until the disposal of this Special Leave Petition.”

(B) No recovery of disputed demand without following the adjudication process

Hon'ble High Court of Delhi in the case of *Rishi Bansal Propertor of Bansal Sales Corporation v Union of India*, reported as 2020 (7) TMI 578 - DELHI HIGH COURT, while disposing of the writ petition, inter alia, held as under:

It is clarified, as a matter of abundant caution that as the demand is disputed by the petitioner, no coercive steps shall be taken for recovery of the said demand without following the adjudication process. However, the petitioner is directed to appear before the respondent nos. 2 and 3 and cooperate in the investigation process

5. No detention for long hours

The person(s) summoned must not be detained for unreasonably long time. What is “unreasonable” shall depend on the facts of each case. Occasionally the statement is recorded under extreme pressure, such as recording the statement after hours of questioning and periods of inactivity. In this context, Hon'ble Gujarat High Court in *Paresh Nathalal Chauhan v the State of Gujarat* – MANU/GJ/3478/2019, has inter alia, held as under:

It may be noted that there is no provision under the GST Acts which empowers the authorized officer to confine family members of a dealer in this manner and to interrogate them at all times of the day and even late at night as has been done in this case. Even the elderly lady was not spared and despite not being well was interrogated at night, that too, without any such powers being vested in the authorized officer. As rightly pointed out by the learned amicus curiae, the only

power to record statements is traceable to Section 70 of the GST Acts which requires the concerned officer to issue summons to the person whose statement is sought to be recorded by following the due procedure in accordance with the law, and thereafter record his statement.

6. Statement must be recorded voluntary

Statement must be recorded voluntary by the person summoned. Thus, the proper officer must not use any coercive steps against the person summoned for seeking his/her statement. The person summoned has a right to retract his statement if he/she proves that the proper officer resorted to coercive measures. In order that statement could be relied upon in any adjudication proceedings, the statement should be recorded voluntary. If it appears to be by inducement, threat, or coercion, it has to be held to be inadmissible as has been held by Supreme Court in *KTMS Mohd v UOI*, reported as AIR 1992 SC 1831. Further, confession has to be affirmatively proved to be free and voluntary as has been held *Hem Raj v State of Ajmer*, reported as AIR 1954 SC 462. Furthermore, confession, before could be relied upon, must be established to have been made voluntarily and true as has been held in *Mahabir Biswas v State of WB*, reported as 1995(2) SCC 25. Similarly, in *State of Haryana v Rajinder Singh*, reported as 90 ELT 241, it was held that the statement must be voluntary and true. However, during summoning of a person, statements are usually recorded by the proper officer as sorts of torture, undue pressure, and the threat of arrest or mental agony is inflicted, to extort or “procure” the statements by the proper officer.

7. No use of violence against the person(s) summoned

It is a judicially settled preposition that the proper officer must not resort to any kind of violence (including a mental violence) against the person summoned. Further, the proper officer must not use abusive language or threat against the person summoned.

8. Court not to interfere generally

Courts usually do not interfere in investigation, at summons stage except in some exceptional cases like malice, coercion, duress or undue pressure. Hon’ble Apex court vide its judgment dated 01.03.2007 in the case of *CC v MM Exports 2007* (212) E.L.T. 165 (S.C.) held as follows:

However, we wish to make it clear that as far as possible the High Court should not interfere at the stage when the Department has issued the summons. This is not one of those exceptional cases where the High Court should have interfered at the stage of issuance of the summons.

9. Important practical suggestions for the person summoned by the Department

He must not lose his cool and answer all the questions politely. If the person is not comfortable with English language, he can ask for recording in local language. One should not make any commitment. If he is not sure of any answer, he must seek time to answer the same but should not give wrong answer under any circumstances. He shall sign the statement after reading the same carefully and in case he feels that some answer has not been recorded correctly he can either ask

the PO to correct it or mention the same while signing the statement. Normally, the copy of the statement is not provided at the time of recording the statement but the same is provided at the time of issuance of notice as a part of Relied upon Documents (**RUD**). Therefore, it is suggested as soon as he comes out of the office of PO he should note down all the questions and answer as per his memory and contact his consultant at the earliest with his noted statement. The statement is legally binding once recorded unless such person retracts the same. Retraction must be done immediately if it is to be made and preferably within 24 hours of recording the statement. Retraction of statement shall preferably be made by Registered Post Acknowledgement Due letter and stating clearly the reason(s) for retraction, for instance, incorrect recording of the statement, obtaining answers to questions by exerting pressure or threat of arrest etc.
