

## **Facing Summons under Central Excise / Service tax**

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### **Background**

The issuing of summons under central excise or service tax is viewed with a lot of fear due to lack of awareness and uncertainty by assesses. Under Section 14 [applicable in service tax vide section 83 of the FA 1994]of the Central Excise Act, summons can be issued to taxpayers when a service tax or excise inquiry is underway. It is issued for recording statements or even for collecting evidence and unfortunately at times to soften the complaint tax payer.

The person summoned is required to appear before the excise or service tax authorities with the required information. Several times it is found summons are issued asking the persons to appear within next 2-3 days onspecified date and time, with documents asked for. In the experience of paper writer it has been found a person does not know what could happened when he presents himself before the concerned officer who has issued summons.

CircularNo. F. No. 207/07/2014-CX-6, dated 20.01.2015 emphasises that the use of summons be made only as a last resort when it is absolutely required. In reality it is found summons areissued even when a letter seeking information would have sufficed. At times even in course of roving enquiry.

The paper writers have briefly touched upon the provisions followed by precautions while attending summons.

### **Summons under central excise and service tax**

Section 14 grants powers to the CE Officer to summon any person to present himself or along with the documents whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

Summons could be sent by registered post or served in person asking the persons to appear before officer on date and time specified in the summons letter. The summons could also contain list of documents, such as past year financials, copies of agreements, invoices which the person is required to provide while attending the summons.

All persons to whom summons are issuedshall be bound to attend, either in person or by an authorised agent. The person summoned could seek postponement of summons due to genuine reasons/ prefixed official meetings, unavoidable causes such as illness, being out of country or personal issues such as death of close family. When the person is unable to attend on the fixed date and time then he has to intimate by RPAD letter giving reason why

not able to attend and request to fix a fresh date with advance intimation. Information available may also be sent noting down what is sent in the same extension letter.

The person attending summons has to state the truth upon any question raised. When the information sought is not known to the summoned person, then clearly should mention that the information is not known. Alternately if time is required to get the information sought, then ask for time. This would ensure no untruthful statements are made which could be used against the assessee if subsequently SCN is issued.

The authorized officer is not empowered under section 14 to retain the documents for which summons were issued. Ministry of Finance Circular No. 42/88-CX.6, dated 24-5-1988 has instructed the departmental officers that whenever any documents/records are seized, immediate efforts should be made to segregate the documents which are proposed to be relied upon in framing/establishing the charges, from the remaining documents/records. Practice however till date has been that it is difficult to get the documents released/ copied.

It is also stated that once the show cause notice is issued to the party the documents/records which have not been relied upon may be returned to the party under proper receipt. This clarification has been reiterated by the Board vide Letter F. No. 207/09/2006-CX.6, dated 8-9-2006

Further it is required in fact, the Show Cause Notice itself may incorporate a clause that unrelayed upon records may be collected by the concerned persons within 30 days of receipt of the Show Cause Notice. The designation and address of the officer responsible for returning the relayed upon records should also be mentioned in the Show Cause Notice.

### **Summons provisions**

The provisions of summons are contained in Section 14 of the Central Excise Act, which is served on a person to ascertain certain information or produce some item.

- a. The summons is a judicial proceeding, which cannot be ignored.
- b. Officers of the rank of Superintendent and above are empowered to issue summons.
- c. The summons should state the purpose of inquiry.
- d. The person summoned has to attend and state the truth upon the matter being examined.
- e. The person is bound to submit all the relevant documents asked for.
- f. The party summoned is to appear and the authorised representative is not permitted to appear on his behalf.
- g. The statement could be recorded during such enquiry done during summons.
- h. The statement is admissible as evidence and can be used against the person in legal proceedings.

- i. Statement should be voluntarily given and not under threat coercion.
- j. The person should be summoned and statement taken during working hours. As per Board Circular No. 65/88, dated 6-9-1988, persons summoned should not be interrogated at odd hours.
- k. The Board vide Circular in F. No. 208/122/89-CX. 6, dated 13-10-1989 has asked the officers to exercise restraint when summoning top management staff of Companies. Summons to managing directors, directors and senior officers must be done only when assessees are not co-operating and this facility should not be used to harass management.
- l. Circular No. F. No. 207/07/2014-CX-6, dated 20.01.2015 emphasized 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.

#### **Precautions to be taken while giving statements**

- The person summoned could take a diary and go to meet the officer.
- He could ask politely before statement is taken whether he could note all the questions and answers in the diary/notebook.
- If not agreed, ensure that before signing on recorded statement, the person asks to allow to read statement before signing it. Only then sign it.
- The person being summoned has the right to ask a copy of the statement being recorded. ( preferably in the start)
- Ask for copy of statement, **before signing it.**
- He should read through and ensure it matches with his own statement which he has recorded in his personal notes taken during summons.
- Refreshing memory by going through the points noted in notebook, if available, is allowed.
- Statement should be in writing and signed by the maker, as it safeguards interests of the maker as well as departments.
- Then keep copy safely for future documentation.
- 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. Especially those aspect which are not recorded!!

- He could immediately send in writing an account of questions asked and replies given by RPAD letter, while making very clear in letter that though requested copy of statement was not provided.
- **The statement is legally binding once given unless it is retracted or additional information provided immediately thereafter.** Therefore if there are any discrepancies in statement vis a vis what was said then on a priority retract statement given within next 24 hours.
- Send across by RPAD letter in detail the deposition proceedings including questions asked and answers given, while making clear that the earlier statement was incorrectly recorded in the statement taken by officer.
- Sometimes the statement could be taken under extreme pressure, such as summoning person at 11 am, but statement being recorded at 4 am next morning. Threats of arrest , closure of business are also unfortunate practices which are used by errant officers.
- In case of such unacceptable behavior, the person could seek permission and leave. Immediately send RPAD letter conveying circumstances when he has left and asking to fix alternate date and time for summons.

### **Conclusion**

We live in a democracy and high pressure., dictated statements recorded under duress/ threat are violation of human rights. In this article the paperwriters have sought to bring some clarity on enabling tax compliant persons to face summons.

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