

Guidelines on the procedure to be followed for arrest and issuing the summons

Complying with the Supreme Court judgment and to regulate the issue of summons by the field formation, the Central Board of Indirect Taxes & Customs (CBIC) has issued instructions prescribing the procedure to be followed for arrest and issuing the summons. We provide you the details as below:

GUIDELINES FOR ISSUE OF SUMMONS

CBIC prescribed the following procedure to be followed

- **Permissions for issuing a summon:** The instructions have provided that the Superintendent should issue the summon on taking the prior approval from an officer not below the rank of AC/DC. If written permission is not possible, either oral or telephonic permission is obtained, and such fact should be reduced in writing and informed to officer at the earliest possible;
- **Contents of Summon:** The summon should bear Document Identification Number ('DIN'). Summon should not ask for information readily available on GSTN portal. Summon should indicate the name of offender unless such revelation is detrimental to investigation;
- **Other important points:**
 - o Issuing officer to record in file the fact of appearance or non-appearance of summoned person and place of copy of statement;
 - o Summoning officer should be present at the time and date of summon. In case of any exigency, the summoned person should be informed in advance either in written or orally;
 - o No summons should be issued to CMD/MD/CEO/CFO or similar officer of company or PSU unless there are clear indications that they are involved in decision making leading a loss of revenue;
 - o Repeated summon should be avoided. If summoned person does not join the investigation, three summons at reasonable intervals should be given. If still he does not join, a complaint should be lodged with jurisdictional magistrate.

(Reference: Instruction No. 03/2022-23 (GST-Investigation) Dated 17.08.2022)

GUIDELINES TO ARREST

CBIC prescribed the following procedure to be followed:

A. Pre-condition for an arrest:

Followings are the pre-requisites:

- The Commissioner should have unambiguous and clear reasons to believe for arrest;
- Such reason to believe should be based on some credible material;
- There is intent to evade tax or commit acts leading to availment or utilization of wrongful ITC or fraudulent refund or non payment of amount collected as tax along with mens rea / guilty mind;

- Answer to any or some of following questions is in affirmative:
 - o Whether the person was concerned in a non-bailable offence?
 - o Whether a credible information is received, or reasonable suspicion exists of such person having concerned?
 - o Whether arrest is necessary for proper investigation?
 - o Whether the person, if not arrested, would hamper with the evidence or witnesses?
 - o Whether person is master mind or key operator?
 - o Whether unless such a person is arrested, his presence cannot be ensured before investigating officer?

B. When no arrest can be made:

Following cases no arrest can be made:

- Where demand is based on interpretation of law;
- Alleged offender is co-operating in the investigation viz. compliance to summons furnishing of documents called for, not giving evasive replies, voluntary payment of taxes etc.

C. Contents of arrest memo:

- Applicable provisions of the law attracted to the case at hand;
- Grounds should be explained to arrested person and this fact should be mentioned in arrest memo;
- Nominated or authorised person should be informed immediately, and this fact should be mentioned in the arrest memo;
- The memo should be given to arrested person with appropriate acknowledgement;
- Separate arrest memos for separate persons;
- Arrest memo to be mandatory contained DIN.

D. Procedure to be followed for bailable offences

- Person arrested for offences as per Section 132(4) of CGST Act, 2017 are mandatorily to be released on bail by the AC/DC;
- Bail conditions should be informed in writing to arrested person and on telephone to authorised or nominated person;
- The arrested person should be allowed to talk to nominated or authorised person;
- Conditions to bail:
 - o Execution of bail bond and one surety by local repute of even amount. The amount of bail bond and surety would depend on the amount of tax involved. The amount should not be excessive and be commensurate with the financial status of arrested person;
 - o Appearance before the investigating officer when required;
 - o Person not to leave the country without informing the officer.

E. Procedure to be followed for non-bailable offences

The arrested person should be produced before the magistrate. If it is not possible, the person should be handed over to nearest police station. It has to be ensured that the arrested person should be produced before the magistrate within 24 hours of arrest, exclusive of time necessary for journey from place of arrest to magistrate office.

(Reference: Instruction No. 02/2022-23 (GST-Investigation) Dated 17.08.2022)

Abbreviations:	
AC/DC	Assistant Commissioner/Deputy Commissioner
CGST Act, 2017	Central Goods and Services Tax Act, 2017
GST	Goods and Services Tax
GSTN	Goods and Services Tax Network
ITC	Input Tax Credit
PSU	Public Sector Undertaking

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