



SUMMONS
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Disclaimer

- This is purely for sharing of knowledge and does not have legal value
- The Hosts may or may not subscribe to the views of the author

Deep Gratitude

To participants for being here

To EIRC, ICAI for this opportunity

To my friends CA Venugopal Gella, CA Unnikrishnan and CA Arpit Haldia for their inputs and Also to Adv K S Naveen Kumar Sir for his questions

To my team members Anindita, Sreeparna and Pragya for their patience.

Fast and furious Infratech Pvt. Ltd. is a Construction Company. They received a notice from DGGI stating that there was a mismatch in turnover shown as per GSTR 7 and GSTR 3B. Immediately the Director of Fast and furious Infratech Pvt. Ltd. was summoned by the DGGI.

Whether the Director can be Summoned by the DGGI?

Whether it is necessary that the Director attend such summons?

If the Director is unable to attend the summons, can she ask her Advocate/ Chartered Accountant to attend the summons for him/her?

Can the summons be attended by the Director and Advocate/Chartered Accountant jointly?

Sleek and smooth Mobiles Pvt. Ltd. is engaged in retail sale of mobile phones. This company has multiple branches all over India. The DGGI had queries regarding the after sales services provided by the branch in Bhopal on behalf of the H.O. in Mumbai. The Bhopal Branch of the company was summoned by the DGGI to be attended in Delhi.



Does the DGGI have the authority to issue summons to the Bhopal branch to attend the summon in Delhi instead of Bhopal?



If during the summon the Bhopal Branch is asked by the DGGI about the operations of Chennai Branch, does the Bhopal Branch have the right to remain Silent?

Perfect infrastructure Pvt. Ltd. is engaged in Construction business. One of its customers has accused the company of profiteering by not passing the benefit of input tax credit to him by way of commensurate reduction in price. The DGAP had issued a notice to the company to produce information/ documents relating to contravention on section 171 of the CGST Act. The Company Submitted all the Information/ Documents required by the DGAP. However, the Director of the company was summoned by the DGAP.

- Can the DGAP summon the Director of Perfect Infrastructure Pvt. Ltd. after all the documents and information has been submitted by the company as per the request of the DGAP?



**> POWER TO SUMMON PERSONS
> TO GIVE EVIDENCE
AND >PRODUCE DOCUMENTS**

SECTION 70

Section 70. Power to summon persons to give evidence and produce documents.-

(1) The proper officer 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 (5 of 1908).

(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 (45 of 1860).

SUMMONS

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 - any person
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 - 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 (5 of 1908).
 - (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 (45 of 1860).



QUESTIONS



INQUIRY VS ENQUIRY

Whether they are synonymous?

What is inquiry

- According to Section 2(g) of The Code of Civil Procedure, Inquiry includes every inquiry except for a trial conducted under this Code, that is done either by a Magistrate or by the Court.
- The inquiry relates to the proceedings that are carried out by the Magistrate before a trial is done.
- Inquiry includes all the enquiries that are conducted under this code but it does not include the trials that are conducted by a Magistrate



**WHETHER SUMMONS
REQUIRES APPROVAL
FROM SENIOR OFFICERS ?**



Section 67 Vs Section 70

- **Section 67**
- (1) Where the proper officer, not below the **rank of Joint Commissioner**, has **reasons to believe** that--
 - (a) a taxable person has **suppressed any transaction** relating to supply of goods or services or both or xxxxxxxxxxxxxxxx; or
 - (b) xxxxxxxxxxxxxxxx
- he **may authorise in writing any other officer** of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.
- **Section 70**
- (1) The **proper officer** under this Act shall have power to summon

Whether summons requires JC approval?

3. Accordingly, Board desires that the following guidelines must be followed in matters related to investigation under CGST:

- (i) Power to issue summons are generally exercised by Superintendents, though higher officers may also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.
- (ii) 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.



Permission in relation to DGGI

- (a) Each investigation must be initiated only after approval of Pr. ADG/ADG of ZU, except in following situations where prior approval of higher officer, shall be required –
- (b) Prior written approval of the DG of SNU if investigation is to be initiated and action to be taken in a case falling under the **following four categories**, namely case involving
 - (i) matters of interpretation seeking to levy tax/ duty on any sector/ commodity/ service for the first time, whether in Central Excise or GST; or
 - (ii) big industrial house and major multinational corporations; or
 - (iii) sensitive matters or matters with national implications; or
 - (iv) matters which are already before GST Council.

Moreover, for cases of the category (iii) or (iv), before any precipitative action is taken in investigation, the respective DG SNU shall necessarily bring the matter to the notice of the Pr. DG.





Jurisdiction of DGGI

Initiating investigation related to an aspect leading to tax demand notice on a taxpayer/GSTIN located outside jurisdiction allocated to a ZU.

In such cases, the ZU seeking such approval is required to make a proposal (with adequate justification of its reasoned circumstances) to/via its DG, SNU.

If the matter is in the jurisdiction of the SNU in which such ZU is located, the approval shall be accorded by the concerned DG, SNU. If it is outside jurisdiction of the said SNU, approval shall be of the Pr. DG.



**WHETHER SECTION 70
CAN BE USED OTHER
THAN IN INTELLIGENCE
OPERATION?**

WHAT IS THE
BOUNDARY
BETWEEN FISHING
EXERCISE/SPECIFIC
INQUIRY.



1. Summons by DGAP / CCI for Antiprofitteering

2. Summons for finding PPOB under lock and key

3. Summons under Rule 56(18)

4. Summons for 3B Vs 2A

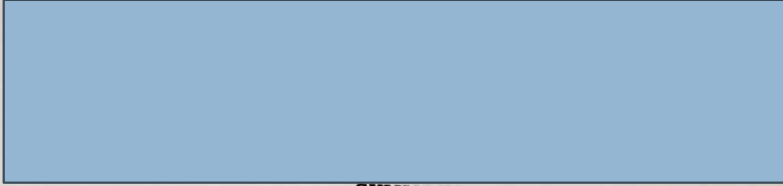
5. Summons for mismatch of GST 7 Vs 3B or 1Vs 3B

**Section 151 of
CGST Act:
Power to call for
information.**

- The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.]



मुनाफाखोरी-रोधी महानिदेशालय
(केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड)
राजस्व विभागवित्त मंत्रालय,
दूसरी मंज़िल, भाई वीर सिंह साहित्य सदन
भाई वीर सिंह मार्ग, गोल मार्केट, नई दिल्ली 110001-
Directorate General of Anti-Profitteering
(Central Board of Indirect Taxes and Customs)
Department of Revenue, Ministry of Finance
Second Floor, Bhai Vir Singh



SUMMONS

(Under Section 70 of the Central Goods and Services Tax Act, 2017)

To
The Managing Partner
Of M/s M. M. Construction,
10, Bhabha Road, Sector 1, Salt Lake,
Lake Gardens, Kolkata,
West Bengal-700091.

Whereas an investigation against M/s M. M. Construction under Rule 129 of the Central Goods and Services Tax Rules, 2017 is being conducted by the Directorate General of Anti-Profitteering and Notice for Initiation of Investigation (NOI) has been issued on 23.12.2020 followed by reminders dated 20.01.2021, 04.02.2021 and 24.02.2021 for seeking information/documents necessary to determine whether the benefit of tax rate change or the benefit of input tax credit has not been passed on to their customers by way of commensurate reduction in price, I have reasons to believe that you are in possession of documents/records which are relevant to the above investigation.

You are hereby summoned under Section 70 of the Central Goods and Services Tax Act, 2017 read with Rule 132 of the Central Goods and Services Tax Rules, 2017 to produce the documents as per schedule given below through speed post, courier or through mail/ or the office e-mail ID on or before **26.03.2021 at 11.00 Hrs** in the Office of the Directorate General of Anti-

project is applicable.

- xii. Copies of Declarations made in Annexure-IV to the Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 along with detailed working of ITC reversal in terms of Annexure-II of the Notification No. 03/2019 Central Tax(Rate) dated 29.03.2019 on opting new scheme of paying GST @ 5% (without ITC), if any.
- xiii. Status of the project said project as on 31.10.2020 in terms of tower-wise sold and unsold units along with copies of Occupancy Certificates, if available.
- xiv. Details of VAT, Service Tax, ITC of VAT, CENVAT credit for the period April, 2016 to June, 2017 and output GST and ITC of GST for the period July, 2017 to November, 2020 for all projects separately including the said project in the format given below along with documentary evidences (Reconciling with Statutory returns).

Period	Statute	Total Gross Taxable turnover (Rs.)	Total Net Taxable turnover (Rs.)	Total output tax liability (Rs.)	ITC/CENVAT available (Rs.)	Tax paid (Rs.)	
						ITC/CENVAT	Cash
2016-17	VAT						
	Service Tax						
April, 2017 to June, 2017	VAT						
	Service Tax						
July, 2017 to March, 2018	GST						
April, 2018 to March, 2019	GST						
April, 2019 to March, 2020	GST						

- xv. List of all home buyers of the said project (in MS-Excel) in the format at Annexure-2.
- xvi. Any other detail/documents relevant to present proceedings.

Given under my hand and seal of the office today i.e. onth of March, 2021.



Deputy Commissioner

GSTIN-15MAJCS2475A17W

CBIC-DIN

SUMMONS

[under Section 70 of the Central Goods and Services Tax Act, 2017]

To,

M/s
Ltd,

ezle,
island
regard

WHEREAS, I, [redacted] am making inquiry in connection with evasion of GST under the Central Goods and Services Tax Act, 2017.

AND WHEREAS, I consider your attendance necessary to

(a) give evidence and / or
(b) produce documents or things of the following description in your possession or under your control:

1. To depose and subscribe written statement
2. Inward supply E-way Bills and other relevant documents
3. Payment details and relevant works contract documents.

NOW, THEREFORE, in exercise of powers vested in me under Section 70 of the Central Goods and Service Tax Act, 2017 I do hereby summon you to appear before me in person on **2024-02-15** at **11:00:AM** at the office of **Assistant Director, Directorate General of Goods and Services Tax**

Inquiry as aforesaid is deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860) and non-compliance of this summon is an offence punishable under Section 174 & 175 of the Indian Penal Code, 1860.

Given under my hand and seal of office to-day the **07** day of **February**, **2024** at **Dimapur**

Name :

Signature :



RIGHTS AND DUTIES

What are the rights and duties of the taxpayer

- **Bound to honour and appear**-It is the duty of the taxpayers to follow the necessary guidelines envisaged under the summons which have all the information with respect to venue, date of appearance, cause, material information, default by the company or individual and etc.
- **Submit Documents:** It is the duty of taxpayers to furnish the relevant documents before the authorities in case of default on their part under GST
- **Furnish Relevant Information:** Taxpayers must not furnish false statements before the authority as it may attract an offense under the Indian Penal Code, 1860 for which they can be tried to mislead Government officials. Therefore, it is the duty of the taxpayers to accurately provide all the information that the tax officers ask for. This will safeguard the taxpayers from any default or eventualities
- **Do not conceal material information:** The information which has serious nature and can affect the direction of the investigation must be put forward
- **Follow Legal Procedure:** The individuals who are summoned must not escape from their duty to follow the provisions of law as are provided under the CGST Act, 2017.



**CAN THE PROCEEDINGS OF THE
SUMMONS BE VIDEO GRAPHED?**

**Rahul Lalwani
vs Union Of
India
WPCR / 568 /
2021
(Chattigarh
HC)**

- "4. That, further summons was issued to Shri Rahul Lalwani on 23.08.2021 to appear before officer of DRI Raipur on 25.08.2021 to tender his statement. Shri Rahul Lalwani again not appeared before DRI, Raipur and Shri Rahul Lalwani vide his letter dated 25.08.2021 **requested to for video recording of his statement and for presence of his lawyer during recording of his statement which was acceded to by his office.**
- 5. That Shri Rahul Lalwani appeared before DRI, Raipur on 31.08.2021 to tender his statement. However as per the request made by Shri Rahul Lalwani, no lawyer to accompany him during the recording of his statement brought by him. On being asked regarding the same, Shri Rahul Lalwani stated that as his lawyer being busy in some other work; he may join the proceedings later. **Further, no lawyer joined the proceedings of recording of the statement of Shri Rahul Lalwani. Further, the voluntary statement dated 31.08.2021 - 01.09.2021 of Shri Rahul Lalwani was video graphed as per his request. Further investigation in the case is underway."**



**DOES THE PERSON ATTENDING
THE SUMMONS HAVE THE RIGHT
TO REMAIN SILENT ?**



Article 20(3) of Constitution of India

- No person **accused** of any **offence** shall be compelled to be a witness against himself.

- 11. This decision has been also referred to in the decision of Smt.Salvi and others vs. State of Karnataka (supra), where the Court has held that the protection against self incrimination is a broad protection that extends to stage of investigation. While there is a requirement of formal accusation for a person to invoke **Article 20(3)**, it must be noted that the protection contemplated by **section 161(2)** Code of Criminal Procedure is wider.
- **Section 161(2)** read with 161(1) protects 'any person supposed to be acquainted with the facts and circumstances of the case' in the course of examination by the police.
- **Therefore, the 'right against self incrimination, protects persons who have been formally accused** as well as those who are examined as suspects in criminal cases. It also extends to cover witnesses, who apprehend that their answers could expose them to criminal charges in the ongoing investigation or even in cases other than the one being investigated.

**JAGA ARJAN DANGAR
Versus
STATE OF GUJARAT**

SCRA/ 6403/2018 (GUJ)

Whether Narco test where the accused may share self incriminating facts are violative of Article 20(3) of Constitution of India?

**Section 155
of CGST Act:
Burden of
proof**

- Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.



- 39. In [Nandini Satpathy v. P.L. Dani](#) [[Nandini Satpathy v. P.L. Dani](#), (1978) 2 SCC 424 : 1978 SCC (Cri) 236 : AIR 1978 SC 1025] , a Bench of three learned Judges was dealing with a case which arose from proceedings initiated against the appellant therein under [Section 179](#) IPC. In the course of the judgment, speaking on behalf of the Bench, this is what V.R. Krishna Iyer, J. had to say: (SCC p. 443, para 35) "35. We will now answer the questions suggested at the beginning and advert to the decisions of our Court which set the tone and temper of the "silence" clause and bind us willy-nilly. We have earlier explained why we regard Section 161(2) as a sort of parliamentary commentary on [Article 20\(3\)](#). So, the first point to decide is whether the police have power under [Sections 160](#) and [161](#) CrPC to question a person who, then was or, in the future may incarnate as, an accused person. The Privy Council and this Court have held that the scope of Section 161 does include actual accused and suspects and we deferentially agree without repeating the detailed reasons urged before us by counsel."

Q No 8. Can an advocate or CA be present while the summon where statements can be recorded?

The Hon'ble Bombay High Court in Criminal Writ Petition no. 2053 of 2023 held as under: Held that, the Petitioner's Advocate is allowed to remain present at a visible distance, but not at an audible distance at the time of recording of the Petitioner statement.

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.

Writ Petition no. 2053 of 2023

2023-BHC-AS-18317-DB



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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2053 OF 2023**

Shri Prakash Kumar Rameshbhai Patel
Proprietor of Devika Bullion
Aged about 55 years, Occupation : Business
having address at 18th floor, 2nd
20 Devki Bhavan, Dhanji Street
Zaveri Bazar, Mumbadevi,
Mandvi, Mumbai-400 003

... Petitioner

Versus

1. State of Maharashtra
(Through PP Officer, High Court)
2. Superintendent of CGST & CX
Anti-Evasion, Mumbai South,
15th Floor, Air India Building,
Nariman Point, Mumbai-400 021
3. Principal Commissioner of CGST & CX,
Mumbai South, 13th & 15th Floor,
Air India Building, Nariman Point,
Mumbai-400 021

... Respondents

16-WP-2053-2023.docx

Mr. Sujit Sahoo for the Petitioner.
Mr. V. B. Konde Deshmukh, APP for the State.
Mr. Jitendra B. Mishra a/w. Mr. Saryaprakash Sharma and Mr.
Ashutosh Mishra for Respondent nos. 2 and 3.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 28th JUNE 2023

ORAL ORDER (Per Revati Mohite Dere, J.)

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties taken up for final disposal. Learned APP waives notice on behalf of the Respondent-State. Mr. Jitendra Mishra waives notice on behalf of respondent nos. 2 and 3.
3. At the outset, learned counsel for the petitioner states that the petitioner is pressing only for prayer clause (d), only to the extent that the petitioner's statement be recorded in the presence of his Advocate i.e. at a visible but not audible distance, during his

Writ Petition no. 2053 of 2023

interrogation. He further on instructions states that though the petitioner has prayed for permission for videography of the interrogation, at the petitioners cost, the petitioner is not pressing for the said relief.

4. Learned counsel for the petitioner relied on the decisions passed by this court in the case of *Kamlesh Kumar Mishra s/o. Brijabhoshan Mishra Vs. The State of Maharashtra & Another*¹, *Mayur Chavda s/o. Deepakbhai Chavda Vs. The State of Maharashtra & Another*² and *Manishbhai Narshibhai Talaviya and Another Vs. Union of India and Others*³

5. Learned Special Public Prosecutor appearing for the respondent nos. 2 and 3 state that the respondent nos. 2 and 3 have no objection to the presence of the petitioner's Advocate, at the time of recording of the petitioner's statement, provided that he is at a visible distance, but not at an audible distance.

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6. Considering the aforesaid and having regard to the orders annexed to the petition from 'Exhibit-G' to 'Exhibit-I', we allow the petition and, as such, permit the petitioner's Advocate to remain present at a visible, but not at an audible distance at the time of recording of the petitioner's statement.

7. The Petition is accordingly allowed and, as such, disposed of. Rule is made absolute in the aforesaid terms.

8. All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.

Section 136 of
CGST Act:
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 **dead or cannot be found, or**

is **incapable** of giving evidence, or

is **kept out of the way** by the adverse party, or

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.**

Evidential value of statement in summons

- Evidential value of statement is that portion of the statement recorded under Section 161 of Code of Criminal Procedure which is proposed to be used for the contradicting the witness should first of all be brought to his notice and he should be questioned about it.
- In *Kuldip Singh & Others v. State of Delhi*³¹, the Hon'ble Supreme Court held that when an important incriminating circumstance was not put to the accused during examination under Section 313 Cr.P.C., prosecution cannot place reliance on such piece of evidence .
- In *Mohan Singh v. Prem Singh*²⁰ this Court held: “30. The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. ... if the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 CrPC cannot be made the sole basis of his conviction.”

Section 25 of The Indian Evidence Act, 1872

Confession to police officer not to be proved.

No confession made to a [**police-officer**] shall be proved as against a person **accused of any offence.**

Retraction of statement made-



Taxpayers have the right to retract the earlier incorrect statement recorded during the summon proceedings and substitute the same with the correct statement.



A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an after-thought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user.



THANK YOU