

Need to revisit Summons Proceedings – Feb 20, 2013



FEBRUARY 20, 2013

By S Sivakumar, Advocate

I would like to refer to Section 14 of the CEA, 1944 which gives the Central Excise officer the power to summon persons to give evidence and produce documents in enquiries under the Act. This provision is also made applicable to Service Tax in terms of section 83 of the FA, 1994.

On the subject of "Issuance of summons in service tax matters", the Board has issued a letter F.No. 137/39/2007-CX.4 dated February 26, 2007 as modified by another letter dated 21/11/2008 detailing the instructions for the field formations on how and when summons are to be issued.

Despite the clear instructions given by the Board that summons are not to be issued for obtaining routine information from the assesseees, it is seen that, in many cases, summons are issued to the CEOs and other top officers of companies more as a tool to intimidate them. It is seen that summons are issued by officers ranging from Superintendents to Senior Intelligence Officers for eliciting routine information. During the fourth quarter of the financial year there is also a significant increase in the quantum of summons issued.

One also comes across summons being issued by officers of the DGCEI to top officers of companies who are located in other cities, etc. It is not uncommon to come across cases of summons being issued to Chairmen of reputed companies located in cities that are far away. In many other cases, I have come across repeated summons being issued to the same top management of the same Company for the same issues that were covered by the earlier summons proceedings.

It is needless to point out that the persons summoned go through a nightmare handling the summons proceedings. This notice invariably contains references to several sections of the Indian Penal Code, 1860 including Section 174 (Non –Attendance in obedience to an order from a public servant), Section 175 (Omission to produce document or electronic record to public servant by a person legally bound to produce it) and Section 193 (Punishment for false evidence). Any company official who is not exposed to the legal system is bound to get nightmares on seeing a summons notice from the Department and especially on seeing references to the Indian Penal Code. Apart from subjecting them to a mental agony, there is a lot of physical agony as well. In such proceedings, the persons summoned are made to write the statement in their own hand. One can imagine the plight of the Chairman of a Company being made to sit before the Intelligence Officer of the DGCEI/Superintendent of the Central Excise/Service Tax Department and made to himself write 10 to 15 pages of the statement.

There is little doubt that the Board's instructions issued far back in 2007/2008 do not seem to have any impact on the manner the summons proceedings are being blatantly misused by the Departmental Officers. One way to reduce this misuse would be to authorize only officers of the level of Assistant/Deputy Commissioners and above, to issue summons. Moreover, these summons should be issued after obtaining prior written permission from an officer not below the rank of Additional Commissioner/Commissioner with reasons for issuance of summons to be recorded in writing. At present, the Superintendent/SIO takes the approval from an officer not below the rank of an Assistant Commissioner.

Before concluding...

It is also not uncommon to see summons being issued to CEOs of Companies, asking them to carry financial accounts and all 'relevant documents' for the past several years, with little time being given. It is also seen that despite the Departmental officers having been provided with desktops and printers, many of the summoning Officers seem to be extremely fond of making their hapless 'visitors' write down the statements in own hand. In a typical summons proceeding this "writing process" could easily take 4 to 5 hours. The purpose in these cases clearly seems to be one to harass and intimidate the assesseees.

I for one am not against the summons proceedings being initiated in justifiable cases. I am only against these provisions being grossly misused and these proceedings being used as an intimidating tool.

The current situation related to the manner in which summons proceedings are conducted by the Department is far from satisfactory and the very intent and purpose behind the Board letter No. 137/39/2007-CX4 seems to have been completely lost. It would be good if the Board can come out with a new Instruction on this subject matter, considering the fact that its earlier directions have not been properly implemented at the ground level.