

## Summons proceedings under Service Tax : An intimidating tool of Revenue – Jan 8, 2009

AS we know, Section 14(1) of the Central Excise Act, 1944, made applicable to service tax in terms of Section 83 of the Finance Act 1994, authorises any central excise officer empowered by the Central Government to issue summons to any person in respect of any enquiry related to service tax. The Board has issued detailed instructions under F.No.137/39/2007-CX-4 dated 26-2-2007, which is reproduced below in its entirety:

**F No. 137/39/2007-CX-4**

**Ministry of Finance, Department of Revenue, Central Board of Excise and Customs**

**Dated : February 26, 2007 (as amended on November 21, 2008)**

**Subject : Issuance of summons in service tax matters-regarding**

It has come to the notice of the Board that on many occasions, merely for obtaining information or documents pertaining to service tax cases/ matters, officers of field formations or intelligence agencies resort to issuance of summons (U/s 14 of the Central Excise Act, 1944 as is made applicable in service tax cases U/s 83 of the Finance Act, 1994) to either service taxpayers or to persons who are not registered with the department. From the nature of information / documents called for, it is clear that many times such information / documents can easily be obtained by making a telephonic request or writing a simple letter to the person concerned. Instead summons are issued in a routine manner, under the signature of superintendent or the senior intelligence officers. (SIOs). The harsh and legal language of the summons not only causes unnecessary mental stress & embarrassment and instills fear in the minds of the receiver but may also become a source of harassment or even unethical practices. Board has taken a serious note of this practice.

02. The undersigned is, therefore, directed to communicate the following directions of the Board for compliance,-

a) For calling for information / documents, normally the mode of communication should be either in the form of a telephone call or by way of sending a simple letter;

b) Issuance of summons should be resorted to, only when the above mentioned modes of communications are found to be ineffective or are likely to jeopardize revenue interest or when it is essential to ensure personal presence of the person concerned to tender evidence or record statement in connection with a service tax evasion case;

c) In cases mentioned under (b) above, the summons should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with reasons for issuance of summons to be recorded in writing;

d) In case, for unavoidable 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;

e) In all cases, where summons are issued, the officer issuing summons must submit a report on proceeding that took place during the presence of the taxpayer/person summoned, and the officer authorizing issuance of summons must satisfy himself that no harassment has been caused during the visit of the person summoned to the office.

03. The above instructions may kindly be brought to the notice of all officers for compliance. Non-observance of these instructions would be viewed seriously.

**(G.Bhattacharya)**

**Commissioner (Service Tax)**

One must stand up and salute the Board for bringing out this instruction, which was aimed at not allowing the summons proceedings to be used as an intimidating tool by the Department and that, these proceedings should be resorted to only in exceptional cases where information is not otherwise forthcoming. In other words, summons proceedings, as per the Board, is to be the exception, rather than a rule.

But, very unfortunately, the Departmental Officers would seem to be largely misusing the summons proceedings in as much as, these proceedings have become the rule rather than the exception ...

**To cite a few cases which I have come across recently.....**

++ A team of three officers walk into the office of a large Real Estate Developer and insist on being produced, original documents related to Cenvat credit availed, for 'verification', then and there. When the assessee politely points out the provisions of Section 5A(2) of the Service Tax Rules, 2004 (which talks of a 'reasonable period not exceeding 15 working days from the date of demand for production of the relevant document'), the visiting 'CEO' (the Central Excise Officer) threatens the Chief Executive Officer that summons would be issued and goes ahead and issues summons, asking the CEO to appear in three days' time, with 'all documents related to Cenvat credit availed' over the last three year period. When the CEO points out that the audit party has already concluded the audit for the said period, the visiting officer comments that the proceedings from Anti-Evasion Wing are 'different'.

++ In another case, the visiting team from Anti –Evasion fails to distinguish between 'access to registered premises' and 'access to documents and records' and the assessee's pleading that these two are different concepts, fails to impress the visiting team.

++ In another case, the senior company official who is summoned is made to wait for the whole day, in the service tax department, without anything being recorded and asked to re-appear after three days.

++ In yet another case, the visiting team of officers carry blank summons and ask for the name of the Managing Director, etc. and then issues summons, on the spot, after filling up the name of the MD.

++ Summons are issued on Wednesday, asking the CEO to appear on Friday, with copies of financial statements for the last four years along with sales invoices, input invoices, schedules to accounts, etc.

TIOL Netizens would appreciate the kind of harassment that assesseees are being subjected to, in the aforesaid cases.

Be that as it may..... one must keep in mind, the language used in a typical summons notice, which is issued by an officer at the level of a Superintendent. This notice would invariably contain 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). It is needless to state here that, 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.

The current situation related to the manner in which summons proceedings are conducted by the Service tax Department is far from satisfactory, as the very intent and purpose behind the Board Instruction No. 137/39/2007-CX4 would seem to have been completely lost.

I for one, am not against the summons proceedings being initiated in justifiable cases. I am only against these provisions being grossly misused.

**Here are some suggestions on making the summons proceedings less intimidating to the assesseees...**

++ The summons notice should justify the issuance of the summons, in the first place, by clearly stating that the assessee has failed to respond to previous notices / communications from the Department and the Department has been left with no option but to resort to summons proceedings.

++ The regular communications from the Department can include a statement that, if the assessee does not submit the information or documents requested for, the Department would be forced to initiate summons proceedings.

++ When company officials who are not exposed to finance or tax are summoned, they should be allowed to consult their colleagues or consultants, while attending the summons proceedings.

++ A mandatory time frame of at least 15 days should be given to the person summoned for appearance. It is ironical that, while 15 working days are provided for assesseees to produce documents in terms of Rule 5A of the Service Tax Rules, etc. to the visiting Departmental officers, no minimum time limit has been fixed in respect of appearance pursuant to issuance of summons.

++ Summons proceedings should be conducted by an officer at the level of an Assistant Commissioner, including issuance of summons notices. It would be too dangerous to have Superintendents to handle these proceedings.

++ Summons notices should clearly specify the documents which are required to be produced and should not be vague. In many cases, the summons notices have vague requirements, eg . 'all relevant documents related to availment of Cenvat credit', etc. In *Barium Chemicals v. AJ Rana* (AIR 1972 SC 591), the Apex Court had set aside the summons on the ground that they were vague.

++ A lot of ground work would need to be done by the Departmental officers prior to the summons proceedings, so that, the company officials who are summoned spend minimal time in the Department. In most cases, we have seen that, the Departmental officials are largely unprepared for the proceedings, leading to a lot of time being wasted, on either side.

++ Summons Notices must be simple and easy to comprehend. There is absolutely no necessity to make a mention of the provisions of the Indian Penal Code in the summons notices, which as aforesaid, completely put off the company officials summoned. Instead, the summons notices can refer to the penalties which can be imposed.

**Before parting....**

++ In my view, after the introduction of Section 77(1)(c)(iii) of the Finance Act, 1994, with effect from May 10, 2008, non-appearance before officers of the Department on issue of summons is squarely covered under the Finance Act , 1994, now. As we know, the said Section talks of a daily penalty of Rs 200/- or an overall penalty of Rs 5,000- whichever is higher. Since the non-appearance is specifically included as a transaction inviting penalty, the provisions of Indian Penal Code can no longer be invoked.

++ To reiterate...as a law abiding citizen, I would fully support summons proceedings in appropriate cases, as aforesaid. In fact, the Department can also take recourse to search and seizure operations, in select

cases. No issues. But, to continue to use summons proceedings, in the manner in which these are currently being used even for routine information gathering, would completely alienate the service tax assesseees.

++ Will the Board kindly intervene and ensure that the summons proceedings are resorted to only in exceptional cases and even when these are resorted to, the interaction between the company officials summoned and the Department is kept to a minimum.

**(The Author is Director, S3 Solutions Pvt Ltd, Bangalore)**