
SEMINAR ON SERVICE TAX PROCEDURAL ASPECTS

**Letters, Enquiries and Summons from
Department**

By

CA. Manish Gadia

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J.S. Lodha Auditorium, ICAI Bhawan,
Mumbai 400 005

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1. INTRODUCTION

- 1.1. Service Tax was first introduced in the year 1994 with three services and that time Government of India had adopted selective/ positive list approach. Selective/ Positive list approach means only services which are specified are only liable to taxed and all other services are not taxable at all. Till Budget 2012-13, some 119 odd services were covered in taxable list. There was overlapping of many services which lead to classification issue.
- 1.2. Till 30th June, 2012 the same approach was followed. Budget 2012 has ushered a new system of taxation of services; popularly known as NegativeList approach. The new changes are a paradigm shift from the existing system where only services ofspecified descriptions were subjected to tax. In the new system all services, except thosespecified in the negative list, will be subject to taxation. This is a step towards GST.
- 1.3. When service tax was first introduced in the year 1994, the revenue from service tax was Rs. 407 crore which had risen to Rs. 1.33 lac crores by the end of F.Y. 2012-13. The revised estimate of revenue from service tax for F.Y. 2013-14 was 1.65 lac crores (against original budget estimate of Rs. 1.80 lac crore). The Budgeted estimate of revenue from service tax for F.Y. 2014-15 has been set at Rs. 2.15 lac crores.
- 1.4. During the F.Y. 2013-14, tax evasion of around Rs. 8000 crore has been detected by DGCEI¹. The origin of plugging of this revenue leakage is the letters, summons issued by department and the enquiries that have been initiated. Now, with a target to increase revenue collection by another Rs. 50000 crore for the F.Y. 2014-15, department shall be under even more strain to detect tax evasions and increase revenue. Hence it time for one to brace for increase in inquiries, letters and summons.

¹ Source: www.economicstimes.indiatimes.com



2. RELEVANT PROVISIONS OF LAW

2.1. POWER TO ISSUE SUMMONS - Section 14 of Central Excise Act, 1944 (CEA) read with Section 83 of Finance Act, 1994.

(1) Any Central Excise Officer duly empowered by the Central Government in this behalf, 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 which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860)

In terms of provision of Section 14 of CEA read with Section 83 of Finance Act, 1994, a Central Excise Officer may summon any person to provide evidence, details and/or documents in respect of any inquiry being conducted by such officer.

In terms of Section 2(b) of CEA, following person shall be considered to be Central Excise Officers:

- Chief Commissioner of Central Excise;
- Commissioner of Central Excise;
- Commissioner of Central Excise (Appeals);
- Additional Commissioner of Central Excise;
- Joint Commissioner of Central Excise;
- Assistant/Deputy Commissioner of Central Excise;



- Any other officer of the Central Excise Department; or
- Any person so authorized by CBEC

2.2. Furnishing true evidence - Section 193 of Indian Penal Code

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

2.3. Insult or Interruption to any Central Excise Officer in proceedings- Section 228 of Indian Penal Code

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

2.4. Access to a registered premises - Rule 5A of Service Tax Rules, 1994

(1) An officer authorised by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every assessee shall, on demand, make available to the officer authorised under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be, -

- the records as mentioned in sub-rule (2) of rule 5;*
- trial balance or its equivalent; and*
- the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961), for the scrutiny of the officer or audit party, as the case may be.*



2.5. Section 77(1)(c) of Finance Act, 1994

Any person who fails to—

- (i) furnish information called for by an officer in accordance with the provisions of this Chapter or rules made thereunder; or*
- (ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or*
- (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,*
shall be liable to a penalty which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

2.6. Relevant extract of Section 89 of Finance Act, 1994

- *Whoever commits any of the following offences, namely :-*
maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information shall be punishable,—
 - *Where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years :*
Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;
 - *In the case of any other offences, with imprisonment for a term, which may extend to one year.*
- *If any person is convicted of an offence punishable as above, then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to three years*
Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term less than six months.



- *The following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely :—*
 - *the fact that the accused has been convicted for the first time for an offence under this Chapter;*
 - *the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;*
 - *the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;*
 - *the age of the accused.*
- *A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.*

2.7. Miscellaneous Provisions of Finance Act, 1994

Section 90 of Finance Act, 1994 - The offence as provided in para 2.6 above shall be *Non-cognizable and bailable*

Section 91 of Finance Act, 1994 –

- *If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.*
- *In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973 (2 of 1974).*
- *All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrests.*



3. ISSUANCE OF LETTERS, ENQUIRIES AND SUMMONS

3.1. Basics

3.1.1. Persons authorized to issue letters, summons

In terms Section 14 of CEA as made applicable to service tax vide section 83 of Finance Act, 1994, a Central Excise Officer (as listed in para 2.1) is authorized to issue summons for the purpose of Service Tax.

Officers of Director General of Central Excise Intelligence (DGCEI) have also been notified as officer vested with the powers of Central Excise Officer by CBEC vide Notification No. 3/2004-ST dated 11th March 2004. The designation of officers of DGCEI and the comparative position as Central Excise Officer has been listed in below table;

S.No.	Designation	Jurisdiction
1.	Director General	Chief Commissioner of Central Excise for whole of India
2.	Additional Director General	Commissioner of Central Excise for whole of India
3.	Additional Director	Additional Commissioner of Central Excise for whole of India
4.	Joint Director	Joint Commissioner of Central Excise for whole of India
5.	Deputy Director	Deputy Commissioner of Central Excise for whole of India
6.	Assistant Director	Assistant Commissioner of Central Excise for whole of India
7.	Senior Intelligence Officer	Superintendent of Central Excise for whole of India
8.	Intelligence Officer	Inspector of Central Excise





3.1.2. Issuance of Summons v/s letters

It has been seen in many instances that Central Excise Officers call for regular details and/or documents from assessee's by way of issuance of a summon under Section 14 of CEA instead of issuing a regular letter calling for such documents. Uncontrolled use of summons may lead to unnecessary fear in minds of receiver of the summons.

To curb the unnecessary usage of summons to obtain details/data, documents from assessee, CBEC had issued a circular (F.No. 137/39/2007-CX-4, dated 26-2-2007) providing instructions on issuance of letters vis a vis summons. In the aforesaid circular, CBEC has expressly directed summons should be issued only when calling for documents vide telephone call or simple letter does not yield response or to safeguard the interest of revenue or where a statement of a person is required to be recorded.

Further, summons are to be issued only after completing procedural formalities as enlisted in aforesaid circular.

3.1.3. Mode of Issuance of letters, summons. (Section 37C r/w Sec 83)

SECTION 37C. Service of decisions, orders, summons, etc. —

(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, -

a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, to the person for whom it is intended or his authorised agent, if any;

b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the



decision, order, summons or notice is tendered or delivered by post or a copy thereof is affixed in the manner provided in sub-section (1).

In terms of Section 37C of CEA, summons can be issued in the following manner;

- Hand Delivery
- Registered Post with Acknowledgement due

If above not possible, then;

- Affixing a copy on a noticeable part of the premises of the noticee

If all of above not possible, then;

- Affixing a copy on notice board of officer or authority issuing the summons

3.2. Reasons for Issuance

3.2.1. Preliminary Scrutiny

- Non-Filers: As per the database of service tax department, out of 17 lacs registered assessee's, only 7 lacs assessee's are filing their service tax returns. The remaining assessee's may be Non-Filers/Stop Filers, assessee who have surrendered the registration but database may not be updated to that effect. In respect of all such assessee's who are registered but not filing their service tax returns, service tax department is rigorously issuing letters asking for details of service provided, amount of service, service tax paid thereon, copy of service tax returns, bank statements, Balance Sheet etc.
- Data Analysis and Research Cell: Service Tax Department is constantly seeking TDS data from their counterparts in Income Tax Department and correspondingly issuing letters to persons receiving the credit of TDS (where such person is not paying service tax or short paying service tax). For Eg: If a person has received Rs. 1.50 lacs as TDS credit u/s 194I of Income Tax Act, 1961, service tax department may assume that such person has provided Renting of Immovable Property Service of Rs. 15 Lacs. Hence, they issue letters to such person requisitioning nature and details of Income and whether they have paid the service tax, etc. In cases where above income was pertaining to Renting of Residential premises for use as residence, the same being Negative List item, does



not attract service tax. However, service tax department may not be in a position to know such facts. Hence, facts of each case needs to be explained to department along with documentary evidence.

- CENVAT credit: There may be certain cases where assessee has accumulated balance of CENVAT credit and is paying service tax on their output service only vide CENVAT credit. In such cases, suspicion may arise in the minds of officers of service tax department and they may call for details of such CENVAT credit along with Original Invoices on which CENVAT credit has been taken for the purpose of verification.
- Short Payment of Tax: There may be cases where assessee has inadvertently short paid service tax on their taxable incomes, they may receive letter from jurisdictional officer asking for reason of short payment of tax.

For Eg: If an assessee has filed their service tax returns showing a certain amount as payable but not paid or entered incorrect/false Challan Identification Number (CIN) in their service tax returns, they may receive letter from department asking for copy of GAR-7 challan for such amounts of service tax short paid.

In case where assessee has taken benefit of exemptions which may not be applicable to him or taken excess abatement, thus short paying taxes, department may call for details/documents for verifying the eligibility of exemption/ quantum of abatement taken by such assessee.

3.2.2. Anti Evasion & DGCEI Enquiries

- Tax Evasion: In certain cases, Anti-Evasion wing of service tax department or DGCEI may receive specific information with respect of tax evasion by an assessee. In such cases, inquiry is initiated against such assessee and department asks for specific set of documents to investigate further.

In some of such cases, department may also directly issue summons instead of initially issuing a normal letter in order to protect the interest of Revenue and to ensure that investigation is not jeopardized in any manner.

For Eg: Service Tax Department receives a tip-off from their counterparts in Financial Intelligence Unit about abnormally large transactions carried



out by a person. In such cases, department may initiate inquiry calling for nature of transaction, source of transaction, taxes paid on the impugned transaction etc.

- Cross inquiry: Inquiry from Anti-Evasion or DGCEI against a person may also originate as a result of inquiry against another assessee who has conducted business with such person.

For Eg: Mr. A has provided taxable service to M/s PQR Ltd and charged service tax to them. M/s PQR Ltd. has taken CENVAT credit of such service tax paid by them to Mr. A. Now, during the scrutiny of books of M/s PQR Ltd., department may come across entries of Mr. A as appearing in books of M/s PQR Ltd. On further investigation, it may come to light that Mr. A is not registered under service tax provisions but it still collecting service tax or is registered but not paying service tax collected from his customers.

In such cases, another inquiry against Mr. A shall be initiated as a result of checking the books of M/s PQR Ltd.

- Industry-wise transaction scrutiny: There may be certain instances where an entire industry is not paying service tax on a particular type/nature of transaction under purported bonafide belief that service tax is not applicable on such transaction. In such cases, there may not be intent to evade payment of service tax, but still tax was not being discharged on such transaction due to a bonafide belief about non-taxability, misinterpretation of law, miscommunication/rumour in the industry.

In all such cases, ultimate since tax was not being paid, inquiries are initiated, generally against all assessee at one go, then further investigations are carried on.

Such cases generally may take years to settle the issue at hand since such matters are usually resolved only at level High Court/ Supreme Court level. Also, CBEC from time to time issues circular for clarification of doubts and reservations prevailing in the industry with respect of levy of service tax on a particular type of transaction.



3.3. Preparations for Enquiry, Summons.

- Consultation: The very first stage in preparation for response an enquiry, letter, summons is having a consultation. The consultation may be internal i.e. meeting of managers, section heads, directors, etc. The consultation may also be external i.e. meeting with auditors, consultants, tax experts, lawyers, etc.

Such consultation may be necessary depending upon case to case basis. Say, department may have issued a simple letter calling for copies of Audited Annual Accounts, GAR-7 challans, etc. In such cases, an assessee may not feel the need to have external consultation.

- Details, Documents: After initial consultation, all the details and documents that have been asked for in the letter/summons has to be collected. Before submission of any details/documents, it is always advisable that all details should be cross-checked with respect to relevance, correctness, accuracy etc.

Further, after all documents are ready, an internal discussion should again be carried out, especially with the Operation/Work execution department, so as to determine whether actual work differs from the documentation and whether any rectification measures need to be taken to streamline the procedures.

- Written Reply: In certain cases, mere submission of details and documents may not be sufficient enough to explain and clarify the view point of assessee. For this purpose, a written reply should be prepared for explanation of facts of the case and clarifying the view of the assessee with respect to the taxability of impugned transaction (if any).

3.4. Response to Letters, Enquiries and Summons

- Written reply: In each case where a person is tendering a reply in response letter, enquiry, summons, it should be in written form irrespective of the fact whether documents were called for by issuance of letter/ summons or asked for, through a phone call, only explanation is being provided without submission of documents, adjournment has been



asked for submission of reply, details, documents or tendering oral evidence.

- Documents submissions: Whenever any documents are being submitted, the same should be made along with a covering letter and should be acknowledged. Such procedural formalities is necessary with a view to safeguard the interest of the assessee from allegations such as non-cooperation during enquiry, non submission of documents, invocation of extended period of limitation in Show Cause Notices.
- True evidence: Every inquiry initiated under Section 14 of CEA is deemed to be 'judicial proceeding' in terms of Section 193 of Indian Penal Code and accordingly intentionally furnishing of false evidence or fabricating false evidence for use in a judicial proceeding is punishable with imprisonment. Therefore, it is the duty of noticee to tender true evidence in such judicial proceedings.
- Adjournments: In cases where noticee is/shall be unable to submit details, documents, etc, on or before the time specified in the letter/summons due to a reasonable cause, the noticee should apply for an adjournment and ask for additional time for submission of details, documents, etc in such cases.
- Duty to attend: in terms of Section 14(2) of CEA, it is the duty of the person summoned to appear before the Central Excise Officer so summoning him. In case the person summoned is unable to appear in person or through his authorized agent, a request to adjourn the proceedings to a later date should be furnished to the concerned Central Excise Officer.
Non attendance of summons may attract penalty under Section 77(1)(c) of the Finance Act, 1994.
- Oral Statements: In certain cases, noticee is summoned only for the purpose of providing oral statements without asking for submission of any documents. In such cases, the noticee shall be duty bound to appear before the Central Excise Officer summoning him and then provide oral statement as may be required by such officer.
- Right to lawyer/consultant during oral statements



Apprehensions generally arise in the minds of the persons summoned by a Central Excise Officer.

Some of the apprehensions may be whether there would be mental pressure exerted upon them, would they be forced to write a confession, whether they would be subject to extreme technical questions which they may not be in a position to answer.

In such cases, assessee wishes for their lawyer/consultant to be present while their oral statement is being recorded.

In this respect Article 22(1) of the Constitution of India provides Right to a Lawyer. However, such right is limited to persons who are arrested or accused person under circumstances of custodial interrogation. [Nandini Satpathy vs Dani (P.L.) And Anr [AIR 1978 SC 1025]]

Thus, since a person summoned is not an arrested person or accused of any crime at that stage of proceedings, the right under Article 22(1) of Constitution of India may not be available at all stages of proceedings.

However, in certain cases, due to special circumstances of the case, Hon'ble Apex Court has allowed for a lawyer to be present during interrogation at a visible distance but beyond hearing distance. [Senior Intelligence Officer V/s Jugal Kishore Samra [2012 (26) S.T.R. 370 (S.C.)]]

- Retraction of statement: A statement made by a person may be later on retracted by such person. It has been held on various occasions by Hon'ble courts that such retracted statement cannot be considered to be solitary basis for arriving at a decision without any corroborative evidence.
- Self Incrimination: On going through various provisions as enacted in Finance Act, 1994, CEA, Indian Penal Code, the biggest apprehension that may arise in mind of a person summoned for providing oral evidence is that he/she shall be made to give a confessional statement and be prosecuted on basis of such confession.

Article 20(3) of the Constitution of India provides right to an accused person to deny confession of his own crime i.e. if a person is accused of a crime, then he has right to remain silent on questions that may result in his conviction.



However, such right has to be exercised with due precaution in cases of summons, since at summons stage, a person is generally still not accused of committing a crime and non co-operation during summons may invite further proceedings.

- Immunity for Authorized person: In certain cases, an authorized person may attend a summon on behalf of another person. Such authorized person may in good faith submit certain details, documents, which may in turn be false or fabricated. Whether such person can be deemed to have committed an offence in terms of provisions of Finance Act, 1994, Section 193 of Indian Penal Code.

In respect of above, in so far as lawyers are concerned, they have specific immunity under Section 48 of Advocate Act, 1961.

However, any person other than lawyers may not enjoy similar immunity. Their defense shall be limited to the fact that their acts bear a direct liability on the person authorizing them rather than being personally liable for their act in good faith. In other words, for the acts of authorized person, whether in good faith or otherwise, the person so authorizing may be held responsible for such acts including submission false/fabricated details, documents.



CA Manish Gadia

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