

GST guidelines for issuance of summons and arrest

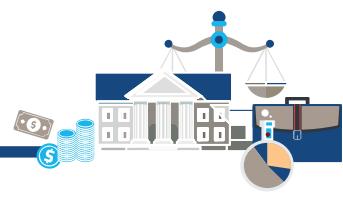
The Central Board of Indirect Taxes and Customs ('CBIC') has issued guidelines for issuing of summons and making arrests. The guidelines are explained in detail below:

1. Guidelines on issuance of summons¹

The guideline is issued with the objective to avoid issuing summons in cases where it is not necessary or where the information/data required can be collated by issuing a letter for requisition. Where a summons must be issued, it should be issued judiciously and in strict compliance with the following guidelines:

- Issued with the written permission of a Deputy/ Assistant Commissioner or a superior officer; an oral/ telephonic permission should also be documented.
- The summoning officer should maintain a record of the appearance/ nonappearance of the summoned person and of the statement recorded (if any).
- The summons should indicate if the person is summoned as the accused, co-accused or as a witness unless it is detrimental to the investigation.
- The summons should not be issued to call upon statutory records that are available on the GST portal.
- A senior official of a Company should be summoned only when it is clear that their involvement has resulted in loss of revenue.
- The format of summons as prescribed in Circular No. 128/47/2019-GST dated 23rd December, 2019 should be followed.
- The summoning officer must be present at the time and date on which summons is issued, and in the event of any exigency, the summoned person must be informed in advance in writing or orally of the exigency.

¹Instruction no. 03/2022-23 (GST-Investigation) dated August 17, 2022



- All persons summoned are bound to appear before the officers concerned, the only exception is the exemption available under Section 132 and 133 of Civil Procedure Code, 1908.
- Issuance of repeated summons should be avoided without ensuring service.
- In cases where the summons have been served but the summoned person does not join the investigation proceedings even after being repeatedly summoned then after giving reasonable opportunity (three summons), a complaint can be filed with the jurisdictional magistrate that the accused is absconding to avoid service of summons (u/s 172 of Indian Penal Code (IPC) and u/s 174 of IPC).

The guidelines warn the officers that non-observance of the instructions will be viewed seriously.

2. Guidelines for making an arrest²

In the decision in the case of **Siddharth v. The State of Uttar Pradesh & Anr**³ the Hon'ble Supreme Court emphasised on constitutional mandate of personal liberty explaining that a distinction should be made between arrest made merely because it was legally permissible and the requirement to make the arrest. Following the Hon'ble Supreme Court's decision, the CBIC has issued the following guidelines to make arrest under the GST law as well the legacy indirect taxes like excise and service tax. The prescribed guidelines on arrest are divided into four parts:

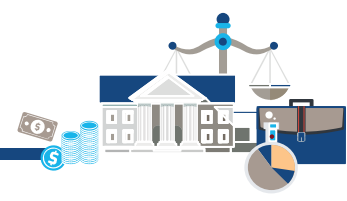
- Pre-requisite for arrest
- Procedure for arrest
- Post-arrest formalities
- Reports to be sent pursuant to the arrest

2.1. Pre-requisite for arrest

- 2.1.1. Before making an arrest 'reasonable belief' must be ascertained based on credible material that is clear and unambiguous as is legally required under section 132(1) of the central Goods and Services Tax Act, 2017 ('CGST Act') to make an arrest.
- 2.1.2. Even if the legal conditions precedent to make an arrest exist a determination should be made based on the following aspects whether an arrest is necessary:
 - Has the person committed a non-bailable offence or has credible information been received, or reasonable suspicion exists, of his having been so concerned?
 - Is an arrest necessary to ensure proper investigation of the offence?
 - If not restricted, is the person likely to disrupt further investigation or to tamper with evidence or intimidate or influence witnesses?
 - If the person a primary operator effecting a proxy/ benami transaction in the name of a dummy GSTIN or non-existent persons, etc. for passing fraudulent ITC etc.?
 - Without making an arrest, can his presence before the investigating officer cannot be ensured?
- 2.1.3. Only where the intent to evade tax or commit an offence (such as the avilment or use of wrongful ITC or fraudulent refund of tax etc.) and the element of *mens rea* / guilty mind is obvious can permission be granted to make an arrest.

² Instruction no. 02/2022-23 (GST-Investigation) dated August 17, 2022

³ 2021 (8) TMI 977 - SUPREME COURT



2.1.4. An arrest should be made only after evaluating whether the threat of disruption of a proper investigation and the possibility of tampering with evidence or intimidating or influencing witnesses exist.

2.1.5. Arrest should not be made:

- Where the case involves the interpretation of law.
- Where the alleged offender is co-operating with the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax is made etc.

2.2. Procedure for arrest

2.2.1. The Principal Commissioner/ Commissioner must:

- Record his 'reason to believe' that an offence is committed, the nature of the offence, the evidence on record, and then authorise officers to make an arrest
- Ensure that the officer making the arrest is acquainted with the process for arrest under the Code of Criminal Procedure, 1973 ('CrPC')

2.2.2. The arrest memo must embody the following information:

- Follow the directions given by the Supreme Court in the case of **D.K Basu vs State of West Bengal**⁴
- Follow the format prescribed in Circular No. 128/47/2019-GST dated 23 December, 2019 for the arrest memo.
- Specify relevant section of the relevant law under which the arrest
- Explain the grounds for arrest
- Include the date and time of arrest
- Record a proper acknowledgment of the copy handed over
- Mention the Document Identification Number (DIN)
- The person nominated by the person arrested is informed immediately of the arrest and this is stated in the arrest memo
- A copy of the arrest memo is handed to the person arrested
- A separate arrest memo is issued to each individual arrested

2.2.3. Other criteria for arrest prescribed in the CrPC such as the time of arrest for a female offender, requirement of medical examination, arrest with minimum force and publicity etc. must be complied with.

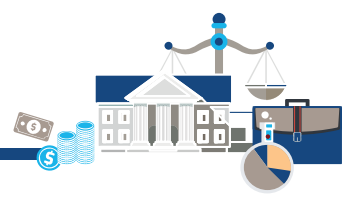
2.3. Post arrest formalities

2.3.1. Where the person is arrested for a bailable offence, the Assistant Commissioner or Deputy Commissioner is bound to release that person on bail against a bail bond on fulfilment of the bail conditions. The bail conditions entail, 1) execution of a personal bail bond (the amount for the personal bail bond and surety is decided based on the facts of each case), 2) one surety of a like amount needs to be given by a local person of repute, 3) an appearance before the investigating officer is mandated when required and the arrested person cannot leave the country without informing the officer.

2.3.2. The bail conditions are required to be informed in writing to the arrested person and also on the telephone to the person nominated by the person arrested.

2.3.3. Where the bail conditions are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within 24 hours of arrest. If necessary, the arrested person may be handed over to the nearest police station for their safe custody, during the night under a challan, before he is produced before the Court and the person nominated by the person arrested should also be informed.

⁴ 1997(1) SCC 416



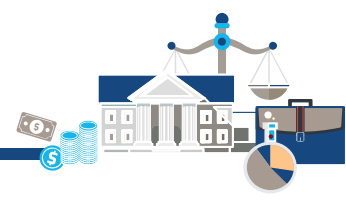
- 2.3.4. In any event, it must be ensured that the arrested person should be produced before the appropriate Magistrate within 24 hours of the arrest, excluding the time necessary for the journey from the place of arrest to the Magistrate's Court.
- 2.3.5. The formats prescribed for the Bail Bond and Challan for handing over to the police should be followed as prescribed in the CrPC.
- 2.3.6. After the arrest of the accused, a complaint should be filed before the competent court as soon as possible, preferably within sixty days of arrest, where no bail is granted. In all other cases of arrest, prosecution complaint should also be filed within a definite timeframe.
- 2.3.7. Every Commissionerate/Directorate must maintain a bail register containing the details of the case, the arrested person, bail amount, surety amount etc. and a copy of the money/ instruments/documents received as a surety should be in the safekeeping of a single nominated officer who will be responsible for these documents to be kept valid until the bail is discharged.

2.4. Reports to be Sent

- 2.4.1. The Principal Director General (DGGI)/ Principal Chief Commissioner(s)/ Chief Commissioner(s) shall ensure that
 - A report is sent for every arrest to the Member (Compliance Management) as well as to the Zonal Member within 24 hours of the arrest, giving details in Annexure-I to the guideline.
 - A record of all India arrests made in CGST, from September 2022 onwards, a monthly report of all persons arrested in the Zone shall be sent to the DGGI Headquarters, New Delhi in the format prescribed in Annexure-II to the guideline by the 5th of the following month.
 - The monthly reports received from the formations shall be compiled by DGGI, Headquarters and a report compiled zone-wise shall be sent to the Commissioner (GST-Investigation), CBIC by the 10th of every month.
 - All such reports are required to be sent only by e-mail.
 - Practice of sending hard copies to the Board should strictly discontinued

Dhruva Comments

Summons and arrest have become a norm under GST, and the guidelines were needed urgently as they have been used as mode of coercion by authorities to make taxpayers pay the tax demand created. Issuance of summons for seeking documents under a regular scrutiny needed reconsideration. The Guidelines are robust and watertight, and compliance remains the key for its successful implementation.





ADDRESSES

Mumbai

1101, One World Centre,
11th floor, Tower 2B, 841,
Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad 380015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana 122002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune 411045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
Emaar Square Building 4, 2nd Floor,
Office 207, Downtown,
Dubai, UAE
Tel: + 971 56 900 5849

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Niraj Bagri

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

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