ಕರ್ನಾಟಕ ಸರ್ಕಾರ (ವಾಣಿಜ್ಯ ತೆರಿಗೆಗಳ ಇಲಾಖೆ)

GOVERNMENT OF KARNATAKA
(Department of Commercial Taxes)

No. Adcom (A, I &C)/PA/CR-10/2023-24

Office of the
Commissioner of Commercial Taxes
(Karnataka), VTK-1, Gandhinagar,
Bengaluru, Dated 06-07-2023.

COMMISSIONER OF COMMERCIAL TAXES
CIRCULAR No.GST-06/2023-24

Sub: Guidelines for issuance of the Summons under Section 70 of the Karnataka Goods and Services Tax Act, 2017

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Preamble:

As per Section 70 (1) of the Karnataka Goods and Services Tax Act, 2017, ***(herein afterwards referred to as KGST Act)***, summons can be issued by the proper officer to any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in an inquiry in the same manner, as provided in the case of a civil court under the provisions of Code of Civil Procedure, 1908 (Act 5 of 1908) (***herein afterwards referred to as CPC***).

As per sub-section (2) of Section 70 of the KGST Act securing such documentary and oral evidence under the said legal provision shall be deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code (Act 45 of 1860) ***(herein afterwards referred to as IPC)***.

II. The relevant legal Provisions relating to Summons are extracted as follows for ready reference:

1. **Section 70 of the KGST Act.**

   "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 (Central Act 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 (Central Act 45 of 1860)."

2. **Section 193 of IPC: Punishment for false evidence.**

   "193. 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."

3. **Section 228 of IPC:**

   "228. Intentional Insult or Interruption to Public Servant Sitting in Judicial Proceeding. 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."

IV. While issuing of summons is one of the instruments with the Department to get/obtain information or documents or statement from any person to find out the evasion of the tax etc., it however needs to be ensured that the exercise of such power is done judiciously and with due consideration. Accordingly, in order to bring uniformity in the procedure for issue of Summons under the provisions of KGST Act, the following Guidelines are issued for the guidance of and compliance by the officers.

i. While issuing Summons for any specific inquiry, the Proper officers should obtain prior written permission from their respective Approving Authority, i.e., the Additional Commissioner of Commercial Taxes (Enforcement) South Zone in the case of Enforcement (South Zone), Bengaluru and the Joint Commissioner of Commercial Taxes in the case of DGSTO and other Enforcement zones with the reasons for issuance of summons to be recorded in writing.

ii. Summons to conduct an inquiry on specific issues should be issued after obtaining prior written permission from the aforesaid Approving authority, with the reasons for issuance of summons to be recorded in writing instead of undertaking inspection under section 67 of the KGST Act depending on the circumstances of the case.

iii. Where for any operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such authority must be obtained and the same should be reduced to writing and intimated to the authority according such permission at the earliest opportunity.

iv. In all cases, where a summons is issued, the officer issuing summons should record in the file about the appearance/ non-appearance of the summoned person and place a copy of the statement recorded on appearance in the file.

v. Summons should normally indicate the name of the suspected offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation so that the recipient of summons has prima-facie understanding as to whether he has been summoned as an accused, co-accused or as a witness.

vi. Issuance of summons should be avoided to call upon any statutory documents which are digitally or in other form available in the GST portal.

vii. Senior management officials such as CMD/ MD/ CEO/ CFO/ similar officers of any company or a PSU being part of the inquiry/investigation should not generally be issued summons in the first instance. They should be summoned only when there are clear indications in the investigation of their involvement in the decision-making process which led to the loss of revenue.

viii. The summoning officer must be present at the time and date specified in the summons issued. In case of any exigency resulting in case of any other preoccupation or non-availability of the officer, the summoned person must be informed in advance in writing or orally and duly recorded in the file.

ix. All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons. The exemptions so available to these persons under Section 132 and 133 of CPC, may be kept in consideration while investigating the case.

x. Issuance of repeated summons without ensuring service of the summons must be avoided. Sometimes it may so happen that summoned person does not join investigations even after being repeatedly summoned. In such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate alleging that the accused has committed an offence under Sections 172 of the Indian Penal Code (absconding to avoid service of summons or other proceedings) and/or 174 of the Indian Penal Code (non-attendance in obedience to an order from public servant), as inquiry under Section 70 of KGST Act is deemed to be a "judicial proceedings" within the meaning of Section 193 and Section 228 of the Indian Penal Code. Before filing such complaints, it must be ensured that the summons has adequately been served upon the intended person in accordance with Section 169 of the KGST Act. However, this does not bar to issue further/fresh summons to the said person under Section 70 of the KGST Act.

V. The above instructions shall be followed scrupulously by all the concerned officers and any non-compliance or breach thereof will be viewed seriously.

Shikha.C, IAS
Commissioner of Commercial Taxes
(Karnataka), Bangalore
Commissioner of Commercial Taxes
Karnataka, Bangalore.

ANNEXURE-I

SUMMONS UNDER SECTION 70 OF THE KGST ACT, 2017 READ WITH RELEVANT PROVISIONS OF THE CGST AND THE IGST ACT 2017

Whereas, I, << Designation of Proper Officer >>, empowered under the Karnataka Goods and Services Tax Act, 2017 read with relevant provisions of the Central Goods and Services Tax Act, 2017 consider your attendance necessary for giving evidence and to produce documents which are in your possession, custody or control in respect of an Inspection/search/seizure under the Karnataka Goods and Services Tax Act, 2017 being held by this office in the case of M/s.____________________________bearing GSTIN:________________ which is pending before me.

Now, therefore, in the exercise of powers conferred on me under section 70 of Karnataka Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017/Inter-State Goods and Services Tax Act, 2017, I hereby summon you to appear before me and to provide a statement on __/__/____ at __:__AM/PM in respect of Inspection/search/seizure conducted on __/__/____ at __:__AM/PM

Non-compliance with this summons is an offence under section 174 of the Indian Penal Code, 1860. You are also informed that giving false evidence in these proceedings is an offence punishable under section 193 of the Indian Penal Code. Given under my name and seal of office on the ___day of ____(Month and Year).

(Name & Signature of Proper Officer)

Designation of Proper Officer

To,

<<Name and address>>

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ANNEXURE-II

STATEMENT TO BE RECORDED U/S 70 OF THE KGST ACT, 2017

Statement of Ms./Mr. ______________ aged _____ years residing at ____ given before the << Designation of Proper Officer >>, on __/__/____ in response to summons issued under Section 70 of the KGST Act, 2017.

I am a business person and I know to read, write and understand <<Language(s)>>. I reside at ____. **I have been read over and understood the provisions of Section 70 of the KGST Act, 2017. I understand that if my statement is found to be false, I am liable to be prosecuted and I am bound by the provisions of Section 193 and Section 228 of Indian Penal Code.** I am taking the help of my daughter/son/husband/ ___________________ aged ___ years and qualified in ___who can read, write and understand <<Language(s)>>, who will translate my statement and read the statement and explain the same to me. I am giving this statement voluntarily and in the form of answers to your questions.

Q1. Introduce yourself?

A:

Q2. What is your PAN number?

A:

Q3. What is your father's name and spouse details?

A:

Q4. Explain about your profession, occupation and source of income?

A:

Q5. Explain the nature of business carried out by you or on your behalf?

A:

Q6. Do you have any registration under GST?

A:

Q7.

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This statement is given voluntarily without any threat or coercion. I agree with the above statement. The above statement is typed by one of the officer's accompanying the <<Designation of Proper Officer>> on a laptop brought with him/her and printed on a printer available with me or made available to him/her.

Typed by me as narrated,

Before Me

Note: Relevant questions may be framed based on the nature of the business and investigation as the case may be.

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4. **Section *174* of IPC*:***

"174. Non-attendance in obedience to an order from public servant.

Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;...."

5. **Section *175* of IPC*:***

"175. Omission to produce document or electronic record to public servant by person legally bound to produce it. _

Whoever, being legally bound to produce or deliver up any document or electronic record of any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;"

6. **Section *122(3)(d) of KGST Act:***

"122. Penalty for certain offences. ....

(3) Any person who—

(a) ....

(b) ....

(c) ....

(d) fails to appear before the officer of State tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry; shall be liable to a penalty which may extend to twenty-five thousand rupees""

III. Obligations and Rights of the person summoned can be summarised as follows:

i. A person who is issued summon is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject, which is the subject matter of examination and to produce such documents and other things as may be required.

ii. All persons so summoned shall be bound to attend, either in person or by an authorised representative, 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 produce such documents and other things, as may be required. However, the exemptions under section 132 and 133 of the Code of Civil Procedure, 1908shall be applicable to requisitions for attendance.

iii. Section 132 exempts certain women from personal appearance. Section 133 exempts certain other persons like The President, The Vice President, The Speaker of Parliament, Union Ministers, Supreme Court Judges, Governors of States, Administrators of Union Territories, Speakers of State Legislatures, Chairman of State Legislative Councils, Ministers of States, High Court Judges and Rulers of former Indian States.

iv. The persons summoned are obligated to/have rights as follows:

   a) attend to the summons;
   b) attend in person or through an authorised representative, as the officer issuing summon may direct (he may direct to attend in person);
   c) state the truth upon any subject in respect of which they are examined;
   d) make statements (recording of statements by officers);
   e) produce documents or things as required;
   f) seek exemption under sections 132 and 133 of CPC regarding attendance.