

GST UPDATE ON SECTION 70 OF CGST ACT, 2017 REGARDING ISSUANCE OF SUMMON:- In continuation to our earlier updates on various aspects of investigation proceedings, we hereby discuss one of the important aspect of any investigation, i.e., issuing summon to persons concerned with the investigation so as to take their statements and produce the documents which would form important evidence for the entire proceedings. Before proceeding further, it is important to understand the meaning of the term “summon”. The term “summon” in normal parlance means order someone to be present. Consequently, in case of investigation proceedings, the proper concerned officer issues letter to the concerned person to present before him for tendering statements which are subsequently used as evidence in conclusion of proceedings.

During the course of summon proceedings, the assessee has fear that they might be ill-treated during the course of summon proceedings and so question arises is whether lawyer of the assessee can be present during the course of summon proceedings? There are contrary decisions on the issue regarding presence of lawyer during the course of summon proceedings.

It has been held in various courts that the lawyer/advocate may be present but cannot participate in the interrogation proceedings on behalf of his client. Reference is made to the decision given by Hon’ble Bombay High Court in the case of **ARVIND KUMAR JAIN DHAKAD VERSUS UNION OF INDIA [2019 (367) E.L.T. 785 (BOM)]** wherein the Hon’ble High Court allowed the advocate to be present during interrogation at a visible but not audible distance. Similarly, it was held by the Hon’ble Gujarat High Court in the case of **SHAMROCK CHEMIE PVT. LTD. VERSUS UNION OF INDIA [2015 (323) E.L.T. 714 (GUJ.)]** wherein the presence of advocate was allowed at a distance with sight but not in hearing range. However, there have also been cases wherein the presence of lawyer has been denied. One such case rendered by Hon’ble Apex Court is that of **SUDHIR KUMAR TRIPATHI VERSUS COMMISSIONER [2016 (44) S.T.R. J138 (S.C.)]**.

In this context, reference is also made to the recent decision given by the Hon’ble Gujarat High Court in the case of **SUDHIR KUMAR AGGARWAL VS DIRECTORATE GENERAL OF GST INTELLIGENCE** wherein it was held that presence of lawyer cannot be allowed to the petitioner at the time of

questioning or examination by the officers as the authority before appearance is sought is Customs officer and not police officer. As the customs officer is not empowered to physically assault as is power vested with Police officer, the question of mishandling does not arise and permission for presence of lawyer was rejected.

In light of the above cited decisions, is clear that under investigation proceedings initiated under GST law, presence of lawyer/advocate is not permissible during the interrogation/examination of the concerned person to whom summon is being issued and even if lawyer is allowed to be present, he cannot participate in the interrogation proceedings.

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