

SUMMONS

Updated as on 24.07.2015

[Training Material for Departmental Use]

E-BOOK

On

SUMMONS

SUMMONS

Note:

1. In this E-book, attempts have been made to explain about *Summons*. It is expected that it will help departmental officers in their day to day work.
2. Though all efforts have been made to make this document error free, but it is possible that some errors might have crept into the document. If you notice any errors, the same may be brought to the notice to the NACEN, RTI, Kanpur on the Email addresses: rtinacenkanpur@yahoo.co.in or goyalcp@hotmail.com (Email address of ADG, RTI, NACEN, Kanpur). This may not be a perfect E-book. If you have any suggestion to improve this book, you are requested to forward the same to us.
3. If any officer is interested in preparing E-book on any topic relating to Customs, Central Excise or Service Tax, he may forward the E-book prepared by him to the Email addresses mentioned above. After necessary vetting, we will include the same in our E-book library for benefit of all Departmental officers.
4. If you feel that this e-book has really helped you in improving your knowledge or understanding of the subject matter, we request you to take few minutes out of your precious time and provide us your valuable feedback. Your feedback is important and will help us in improving our e-books.

Sd/-

(C. P. Goyal)
Additional Director General
NACEN, RTI, Kanpur

SUMMONS

INDEX

1. Introduction:	1
2. Legal Provisions of summon	1
3. Section 14 of Central Excise Act, 1944	2
Special audit in certain cases:—	2
Special audit in cases where credit of duty availed or utilised is not within the normal limits, etc. —	3
4. Section-83 of Finance Act, 1994	4
Section-83: Application of certain provisions of Act 1 of 1944 –.....	4
5. Summons to Managing Directors, Directors and other top officers under Section 14- when not issuable.	4
Circular F.No.208/122/89-CX.6 dated 13.10.1989	4
6. Power to arrest, summon, search and to order for confiscation of vessels and cargo	4
Notification No. 9/99- C.E. (N.T.), dated 10-2-1999	4
[F.No. 201/13/98-CX.6 dated 19.02.1999(M.F.D.R.)	6
7. Designation — Change of	6
Notification No.33/99 –CE(N.T.) dated 11.05.99.....	6
8. Powers conferred by CBEC officers	7
Notification No.38/2001-Central Excise (N.T.) Dated- 26th June, 2001.....	7
9. Issuance of summons- CBEC's Instructions	9
Instruction F No. 137/39/2007-CX-4 dated 26.02.2007	9
Instruction F. No. 207/07/2014-CX-6 dated 20.01.2015	10

SUMMONS

SUMMON

1. Introduction:

- 1.1. The CBEC has issued circulars/Instruction and provided certain guidelines to the officers of the department for issue of summon to any person who is required to give evidence or to produce a document or any other thing in any enquiry. For the purpose of convenience of the departmental officers, the circulars/instructions on the subject matter have been summarized in the e-book.

2. Legal Provisions of summon

S. No.	Section & Name of the Act	Subject
01	Section 14 of Central Excise Act, 1944	Powers to summon persons to give evidence and produce document in enquiries under Central Excise Act, 1944.
02	Section 83 of the Finance Act, 1944	Application of certain provisions of Act 1 of 1944 (the provisions of the Section 14 of Central Excise Act, 1944 as in force from time to time, shall apply so far as may be in relation to Service Tax as they apply in relation to a duty of excise) in Para 4.
03.	Circular F.No.208/122/89-CX-6 dated 13.10.1989	Summons to Managing Director, Directors and other top officers under Section 14 – when not issuable.
04.	Notification No.09/99-CE(NT) dated 10.02.1999 as amended vide Notification No.33/99-CE(NT) dated 11.05.99	Power to arrest Summon , search and to order for confiscation of vessels and cargo – Notification No.102/57 –CE superseded.
05.	Corrigendum F.No. 201/13/98-CX.6 dated 19.02.1999 (MFDR)	Correction made in the Notification No.09/99-CE(NT) dated 10.02.1999. in the table in column(4) of S.No.1 for “execute” read exercise”
06.	Notification No.38/201-CE(N.T.) dated 26.06.2001	Appointment of officers as Central Excise Officers.
07.	Instructions letter F.No.137/39/2007-CX 4 dated 26.02.2007	Issuance of Summons in Service Tax matters.
08.	Instruction F.No.207/07/2014-CX-6 datd 20.01.2015	Instructions regarding issue of summons in Central Excise & Service Tax Matters

SUMMONS

3. *Section 14 of Central Excise Act, 1944*

Special audit in certain cases:—

- 3.1 **Section-14(1):** If at any stage of enquiry, investigation or any other proceedings before him, any Central Excise Officer not below the rank of an Assistant Commissioner of Central Excise, or Deputy Commissioner of Central Excise having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person, he may, with the previous approval of the Chief Commissioner of Central Excise, direct such manufacturer or such person to get the accounts of his factory, office, depots, distributors or any other place, as may be specified by the said Central Excise Officer, audited by a cost accountant or Chartered accountant, nominated by the Chief Commissioner of Central Excise in this behalf.
- 3.2. **Section-14(2):** The cost accountant or Chartered accountant, so nominated shall, within the period specified by the Central Excise Officer, submit a report of such audit duly signed and certified by him to the said Central Excise Officer mentioning therein such other particulars as may be specified:
- Provided** that the Central Excise Officer may, on an application made to him in this behalf by the manufacturer or the person and for any material and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (1) is received by the manufacturer or the person.
- 3.3 **Section-14(3):** The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the manufacturer or person aforesaid have been audited under any other law for the time being in force or otherwise.

Explanation. 1 - For the purpose of this section, “cost accountant” shall have the meaning assigned to it in clause (b) of sub-section (1) of Section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959).

Explanation.2 – For the purpose of this section, “chartered accountant” shall have the meaning assigned to it in clause (b) of sub-section (1) of Section 2 of the Chartered Accountants Act, 1949 (38 of 1949).

SUMMONS

Special audit in cases where credit of duty availed or utilised is not within the normal limits, etc. —

(1) If the Commissioner of Central Excise has reason to believe that the credit of duty availed of or utilised under the rules made under this Act by a manufacturer of any excisable goods -

(a) is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate;

(b) has been availed of or utilised by reason of fraud, collusion or any wilful mis-statement or suppression of facts, he may direct such manufacturer to get the accounts of his factory, office, depot, distributor or any other place, as may be specified by him, audited by a cost accountant or Chartered accountant nominated by him.

(2) The cost accountant or Chartered accountant so nominated shall, within the period specified by the Commissioner of Central Excise, submit a report of such audit duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the said manufacturer aforesaid have been audited under any other law for the time being in force or otherwise.

(4) Omitted

(5) The manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilised in any proceeding under this Act or rules made thereunder.

Explanation- 1 — For the purpose of this section, “cost accountant” shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959).]

Explanation.2 – For the purpose of this section, “chartered accountant” shall have the meaning assigned to it in clause (b) of sub-section (1) of Section 2 of the Chartered Accountants Act, 1949 (38 of 1949).

SUMMONS

4. Section-83 of Finance Act, 1994

Section-83: Application of certain provisions of Act 1 of 1944 -

The provisions of the following section of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise: - 9C, 9D, 11B, 11BB, 11C, 12A, 12B, 12C, 12D, 12E, 14, [14AA]*, 15, 33A, 35F to 35O (both inclusive), 35Q, 36, 36A, 36B, 37A, 37B, 37C, 37D, [38A]* and 40.

5. Summons to Managing Directors, Directors and other top officers under Section 14- when not issuable.

Circular F.No.208/122/89-CX.6 dated 13.10.1989

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Complaints have been received from the trade that in some of the Collectorates summons under Section 14 of the Central Excise and salt Act, 1944 are being issued to the Managing Directors and other high officers with a view to enforce recovery of dues which are under dispute. Action under this section is to be taken only as a last resort in cases where assesses are not cooperating or investigations are to be completed expeditiously. This section should not be used for harassing the top management for forcing them to pay up demands which are disputed by them. For recovery of demands normal procedure under the law should be followed.

If any instance of issue of summons to Managing Directors and others without justification is noticed, a serious view will be taken by the board. Collectors will be held personally responsible for enforcing these instructions in their charges.

6. Power to arrest, summon, search and to order for confiscation of vessels and cargo

Notification No. 9/99- C.E. (N.T.), dated 10-2-1999

Power to arrest, summon, search and to order for confiscation of vessels and cargo – Notification No. 102/57-CE superseded:

In exercise of the powers conferred under the provisions of the Central Excise Act, 1944 (1 of 1944) and the Central Excise Rules, 1944 specified under column (2) of the Table below and in supersession of notification of the Government of India in the Ministry of Finance, Department of

SUMMONS

Revenue No. 102/57-C.E., dated the 7th December, 1957, except in so far as it relates with Section 26 of the said Act, the Central Government hereby empowers the Central Excise Officers specified in column (4) of the Table below to exercise the powers of arrest, search and seizure, to hold enquiries and to confiscate vessels and cargo, under the provisions of the said Act and the said Central Excise Rules specified in column (2) of the said Table, and subject to the conditions and limitations, if any, as specified in column (4) of the said Table.

TABLE

Serial No.	Sections of the Central Excise Act, 1944 (1 of 1944)/ Rules of the Central Excise Rules, 1944	Nature Of Power	Central Excise Officer
(1)	(2)	(3)	(4)
1	Section 13	Power to arrest under said section	All Central Excise Officers not below the rank of an Assistant Commissioner of Central Excise and Central Excise Officer below the rank of Assistant Commissioner, if authorised in writing by the Assistant Commissioner of Central Excise or any other Central Excise Officer superior in rank to the Assistant Commissioner of Central Excise to execute such power.
2	Section 14	Power to summon persons to give evidence and produce documents in inquiries under the said section	All Central Excise Officers not below the rank of a Superintendent of Central Excise.
3	Section 19 and Section 21	Power to send persons arrested to the Magistrate under the said section 19 and consequential powers under the said section 21	All Central Excise Officers not below the rank of a Superintendent of Central Excise.
4	Rule 201 and Rule 202	Power to enter and search under the said rule 201 and consequential powers under the said rule 202	Not below the rank of an Inspector of Central Excise, provided that such entry, search and access shall be made (except in case of a factory, conveyance or vessel), with the written permission of an officer not below the rank of an Assistant Commissioner of Central Excise.
5	Section 28	Power to order for confiscation of vessel and cargo under the said section	Not below the rank of an Assistant Commissioner of Customs.

SUMMONS

[F.No. 201/13/98-CX.6 dated 19.02.1999(M.F.D.R.)

**Power to arrest, summon, search and to hold enquiries and to confiscate vessels and cargo –
Corrigendum to Notification No. 9/99-C.E.(N.T.) :**

In the nonfiction of the Government of India in the Ministry of Finance, Department of Revenue No.9/99-Central Excise (N.T.), dated the 10th February 1999, published in the Gazette of India, Extraordinary, Part II, Section 3, sub section (i) under G.S.R. 92(E), dated 10.02.1999, in the Table, in column (4) of serial No.1 for “execute” read “exercise”.

7. Designation — Change of

Notification No.33/99 -CE(N.T.) dated 11.05.99

Designation — Change of

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), and of all other powers enabling it in this behalf, the Central Government hereby directs that the references to the authorities specified in column 2 of the Table below in the rules made or deemed to have been made under that section or in any other notification, decision, orders or notices, issued or made under such rules or under any other section of the said Act shall, unless the context otherwise requires, be construed as references to the authorities specified in the corresponding entry in column 3 of the said Table.

TABLE

Sl. No.	Existing Reference	Substituted Reference
(1)	(2)	(3)
1.	Deputy Commissioner or Deputy Commissioner of Central Excise	Joint Commissioner of Central Excise
2.	Assistant Commissioner or Assistant Commissioner of Central Excise	'Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise'

SUMMONS

8. Powers conferred by CBEC officers

Notification No.38/2001-Central Excise (N.T.) Dated- 26th June, 2001

In exercise of powers conferred by clause (b) of section 2 of the Central Excise Act, 1944 read with sub-rule (1) of rule (3) of the Central Excise (No.2) Rules, 2001, the Central Board of Excise and Customs appoints the officers specified in column (2) of the Table below as Central Excise Officers and invests them with all the powers, to be exercised by them throughout the territory of India, of an officer of Central Excise of the rank specified in the corresponding entry in column (3) of the said Table, such powers being the powers of a Central Excise Officers conferred under the said Act and rules made thereunder with effect from 1st July, 2001.

TABLE

Sl. No.	Officers	Rank of Officer of Central Excise
(1)	(2)	(3)
1.	Officers of the Director General of Central Excise Intelligence, namely: – 1. Director General 2. Additional Director General 3. Additional Director 4. Joint Director 5. Deputy Director or Assistant Director 6. Senior Intelligence Officer 7. Intelligence Officer	1. Chief Commissioner 2. Commissioner 3. Additional. Commissioner 4. Joint Commissioner 5. Deputy Commissioner or Assistant. Commissioner 6. Superintendent 7. Inspector
2.	Officers of Directorate General (Vigilance), namely: – 1. Director General (Vigilance) 2. Additional Director General 3. Additional Commissioner (Vigilance) 4. Joint Commissioner (Vigilance) 5. Deputy Commissioner or Assistant Commissioner (Vigilance)	1.Chief Commissioner 2. Commissioner 3. Additional Commissioner 4. Joint Commissioner 5. Deputy Commissioner or Assistant Commissioner
3.	Officers of Directorate General of Revenue Intelligence, namely: – 1. Director General 2. Additional Director General 3. Additional Director 4. Joint Director 5. Deputy. Director or Assistant Director 6. Senior Intelligence Officer 7. Intelligence Officer	1.Chief Commissioner 2. Commissioner 3. Additional Commissioner 4. Joint Commissioner 5. Assistant Commissioner or Deputy Commissioner 6. Superintendent 7. Inspector

SUMMONS

4.	Officers of Directorate General of Central Economic Intelligence Bureau, namely: – 1. Deputy Director General 2. Assistant Director General 3. Senior Technical officer 4. Intelligence Officer	1. Commissioner 2. Joint Commissioner 3. Assistant Commissioner or Deputy Commissioner 4. Inspector
5.	Officers of Directorate General of Inspection (Customs and Excise) , namely: -1. Director General 2. Additional Director General 3. Additional Director 4. Joint Director 5. Deputy. Director or Assistant Director 6. Senior Intelligence Officer (Class-I & II)	1. Chief Commissioner 2. Commissioner 3. Additional Commissioner 4. Joint Commissioner 5. Assistant Commissioner or Deputy Commissioner 6. Superintendent
6.	Officers of Directorate of Statistics and Intelligence, namely: – 1. Director 2. Joint Director 3. Deputy Director 4. Senior Research Officer and Senior Analyst 5. Assistant Director Research and Junior Analyst 6. Statistical Investigator (Senior Grade) 7. Statistical Investigator (Ordinary Grade)	1. Commissioner 2. Joint Commissioner 3. Assistant Commissioner or Deputy Commissioner 4. Assistant Commissioner or Deputy Commissioner 5. Superintendent 6. Inspector 7. Inspector
7.	Officers of Customs in Export Processing Zones, Free Trade Zones or Special Economic Zones, namely: – 1. Commissioner 2. Additional Commissioner 3. Joint Commissioner 4. Assistant Commissioner or Deputy Commissioner 5. Appraiser 6. Examiner 7. Preventive Officer	1. Commissioner 2. Additional Commissioner 3. Joint Commissioner 4. Assistant Commissioner or Deputy Commissioner 5. Superintendent 6. Inspector 7. Inspector
8.	Assistant Director (Cost) in Central Excise Commissionerate	Assistant Commissioner or Deputy Commissioner

SUMMONS

9. Issuance of summons- CBEC's Instructions

Instruction F No. 137/39/2007-CX-4 dated 26.02.2007

F No. 137/39/2007-CX-4
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

Dated : February 26, 2007

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 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 Deputy 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)
CBEC, New Delhi

SUMMONS

Instruction F. No. 207/07/2014-CX-6 dated 20.01.2015

F. No. 207/07/2014-CX-6
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi, the 20th January, 2015

To

Principal Chief / Chief Commissioners of Central Excise (All),
Principal Chief / Chief Commissioners of Central Excise of Central Excise & Service Tax
(All),

Sub: Instructions regarding issue of summons in Central Excise and Service Tax matters – reg.

Madam/Sir,

It has been brought to the notice of the Board that in some instances, the summons under Section 14 of the Central Excise Act, 1944 have been issued by the field formations to the top senior officials of the companies in a routine manner to call for material evidence/ documents. Besides, summons have been issued to enforce recovery of dues, which are under dispute. As per Section 14 of Central Excise Act, 1944, summons can be used in an inquiry for recording statements or for collecting evidence/ documents. While the evidentiary value of securing documentary and oral evidence under the said legal provision can hardly be over emphasized, nevertheless, it is desirable that summons need not always be issued when a simple letter, politely worded, can also serve the purpose of securing documents relevant to investigation. It is emphasized that the use of summons be made only as a last resort when it is absolutely required.

2. On this issue, Board has already issued a circular vide F. No 208/122/89-CX.6 dated 13.10.1989 in respect of Central Excise. Instruction has also been issued vide F. No. 137/39/2007-CX.4 dated 26.2.2007 in Service Tax matters.

3. The following guidelines are being issued to be followed in both Central Excise and Service Tax matters:–

(i) Power to issue summons are generally exercised by Superintendents, though higher officers also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;

(ii) where for 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;

SUMMONS

(iii) In all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorised the issue of summons.

4. Further, senior management officials such as CEO, CFO, General Managers of a large company or a PSU should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.

5. These instructions may be brought to the notice of all the field officers for strict compliance. Non observance of the instructions will be viewed seriously. Hindi version would follow.

Yours faithfully,

(ROHAN)

Under Secretary, (CX-6)

Note: All officers issuing summons should ensure that they comply the circulars/Instructions issued by the CBEC.
