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Appearance through Authorized Representative; ex abundanti cautela**ASHWARYA SHARMA**

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In the recent Union Budget, Parliament has added sub-section (1A) in section [70](#) of the CGST Act dealing with summon proceedings on the recommendations of the GST Council made in its 53rd meeting held in New Delhi on 22nd June 2024. As per section 1(2) of the Finance (No. 2) Act, 2024 the said provision would take effect from a date to be notified by the government which is likely to be notified once the respective state legislatures also mirror the said amendment in the respective state laws.

The amendment appears to be a trade friendly measure introduced with the objective of ease of doing business, however a closure scrutiny is required to understand the scope, ambit, purpose and necessity leading to the amendment. Before going to the amendment, let us understand what is a summon and who is required to attend and comply with the same. The word 'summon' is not defined under the GST laws, hence reliance is placed on the dictionary meaning and court decisions to understand the nature, scope and ambit of the said term.

As per Black's Law Dictionary (Tenth Edition) (Page 1665) summon is defined as follows:

A notice requiring a person to appear in court as a juror or witness

In *Laxman Padma Bhagat v. State* (AIR 1965 Bom 195 : 67 Bom LR 317 : ILR 1965 Bom 648) the Bombay High Court in the context of the Sea Customs Act observed:

" The ordinary meaning of the word "summons" is to demand presence of; call upon person to appear. The power that is conferred is to require a person to appear. The person may be needed to appear before the Customs Officer by serving a written notice or summons to that effect on him, or may be called by merely sending a message to him; or, if he happens to be in the presence of the Customs Officer, merely but telling him that his presence is needed for giving evidence."

Thus, a summon is a command issued by a competent authority to a specific person directing him to appear or produce certain documents as may be directed before such authority.

Prior to its proposed amendment section 70 was worded as follows:

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 (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 (45 of 1860.).

That section 135 of the Finance (No. 2) Act, 2024 has inserted sub-section (1A) in section 70 as follows:

"(1A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required."

Thus, the main purpose of amendment appears to be to allow the person summoned to attend through authorized representative. Further, as per "Notes on Clauses" appended to the Finance (No. 2) Bill, 2024 the amendment is made with the objective of enabling an authorised representative to appear on behalf of the summoned person before the proper officer. Thus, the objective of the amendment is to allow appearance through the authorised representative in lieu of the summoned person himself.

A quick comparison can also be made with section [108](#) of the Customs Act, 1962 being a *pari-materia* provision wherein similar provisions is made in sub-section (3) which allows the representation through authorized agent. The relevant text thus:

108. Power to summon persons to give evidence and produce documents.-

.....

(3) 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 produce such documents and other things as may be required:

Before parting reliance is also placed on section [116](#) of the CGST Act which already provides for the appearance through authorized representative except when required personally. The relevant text thus:

116. Appearance by authorised representative.

- (1) Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.

That from the language of section 116, the same would apply to any proceedings under the CGST Act which should also include the summon proceedings under section 70. Thus, the said provision already provided for representation through authorised representative before the 'proper officer' which implies that there was no need to specifically amend section 70 providing for appearance through authorised representative and the same is made can be said to be made *ex abundanti cautela* meaning thereby 'as abundant caution'. This must have stemmed from the fact that many 'proper officers' were denying representation through authorised representative due to absence of enabling provision under section 70 itself who missed the settled law that statute is to be read as a whole and each and every provision must be read harmoniously in conjunction with the other provisions so as to make a consistent enactment of the statute as a whole placing reliance on *ITW Signode India Ltd. v. Collector Of Central Excise* [2003] taxmann.com 382/[2003 \(158\) E.L.T. 403 \(S.C.\)](#) or Civil Appeal No. 7868 of 1995, decided on 19-11-2003.

To conclude, it is well recognized that an authorised representative can appear on behalf of the summoned person unless the personal presence is directed by the proper officer. Thus, the amendment made in section 70 respectfully appears to be unwanted as the situation was already dealt with under section 116 of the CGST Act.

