

Service of Notice under GST Regime

By Adv. Dinesh Verma

“Service” means giving legally required notice to other parties that you have filed papers asking for a court order that may affect them. The court papers can only be delivered in a manner permitted by law, and proof of proper delivery must be filed with the court. But why it is necessary to serve a notice to other parties. Here, in this article we can understand about serving of notice and why it is required.

What is service of Notice?

It is an official document stating that a claim has been served on a party to a legal dispute. A notice of service is often send to a defendant in a legal action, together with a copy of summons (an order requiring a person to appear in court or at an official enquiry). The term used for the giving of information to a person who is entitled to receive it. It needs to be carried out according to law. Service of Notice is the procedure by which a party gives an appropriate Communication to the second party of initiation of legal action.

Service of Communication is an essential step of any process of law. Each law has rules regarding the appropriate mode of service of notice, summon etc.

Service of Notice under CGST

Section 169 of CSGST Act, 2017 defines Service of Notice in Certain Circumstances:-

- a) Serving directly or by messenger
- b) Serving by post
- c) Serving by E-mail
- d) Serving at GST portal
- e) Serving by publication in newspaper
- f) Serving by affixing at conspicuous place

a) Serving directly or by messenger

Any decision, order, summons, notice or other communication shall be served by giving or tendering it directly or by a messenger including a courier to

- The addressee or
- The taxable person or
- To his manager or
- Authorised representative or
- An advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or
- To a person regularly employed by him in connection with the business, or
- To any adult member of family residing with the taxable person

b) Serving by post

By registered post or speed post or courier with acknowledgement due,

- To the person for whom it is intended or
- This authorised representative, if any,
- At his last known place of business or residence

(c) Serving by Email

By sending a communication to his e-mail address provided

- At the time of registration or
- As amended from time to time; or

(d) Serving at GST Portal

By making it available on the common portal; or

(e) Serving by Publication in Newspaper

By publication in a newspaper circulating in the locality in which

- The taxable person or

- The person to whom it is issued
- Is last known to have resided, carried on business or
- Personally worked for gain; or

(f) Serving by affixing at Conspicuous Place

If none of the modes aforesaid is practicable, by affixing it in some conspicuous place

- At his last known place of business or residence and
- If such mode is not practicable for any reason,
- Then by affixing a copy thereof on the notice board
- Of the office of the concerned officer or
- Authority who or which passed such decision or order or issued such summons or notice.

Section 169(2) Deemed Service

Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is

- tendered or
- published or
- A copy thereof is affixed in the manner provided in sub-section (1).

Section 169(3) Deemed Receiving by Addressee

When such decision, order, summons, notice or any communication is sent by registered post or speed post

- It shall be deemed to have been received by the addressee
- At the expiry of the period
- Normally taken by such post in transit
- Unless the contrary is proved.

Service of Notice under Income Tax Act

The issue of service of notice generally covered by **Section 282** of the **Income Tax Act 1961**. This says that a notice or requisition

under the Act may be served on the person therein named either by post or as if it were a summons issued by a Court under the **Code of Civil Procedure, 1908** (the **CPC**). **Section 283** deals with service of notice when a family is disrupted or a firm etc. is dissolved and **Section 284** deals with service of notice in the case of a discontinued business.

In **CIT vs. Ramendra Nath Ghosh, 82 ITR 888(SC)**, the Inspector of Income-tax, who was the service officer, claimed to have served the notice by affixing it on the assessee's place of business, but in his report did not mention the names and addresses of the persons who identified the place of business of the assessee, nor did he mention in his report or in the affidavit filed by him that he personally knew the place of business of the assessee. In this background, it was held by the Supreme Court, on the basis of **Rule 17 of Order V** of the **CPC** that the service of notice was not in accordance with the law. The Supreme Court said that the High Court, after going into the facts of the case very elaborately and after examining several witnesses, had come to the conclusion that the service made was not proper. This view was upheld by the Supreme Court. As far as service of notice on persons other than the assessee is concerned, broadly speaking the person must be an authorised person and should be covered by the provisions of **Section 282** of the Act, where the person is not an individual.

The **Apex court** in **State of Punjab Vs. Khemi Ram (MANU/SC/0434)** held that the word 'communicate' cannot be interpreted to mean that the order would become effective only on its receipt by the concerned govt. officer. Communication is once the order is put in the course of transmission and thus, goes out of control of the authority issuing it.

The **Division Bench** of **Delhi High Court** in **Dinesh Kumar Gupta vs. UOI (MANU/DE/0892/2017)** held that

communication was complete when the order/communication was despatched and handed over to the postal authorities.

Service of Notice is Important

Service of notice on concerned parties is important and is a mandatory part of any proceeding or process before courts and authorities. In some situation even a service is deemed to have taken place for example if notice refuse to take notice or if he does not claim the same even after an intimation has been given.

V.R.A. Cotton Mills (P) Ltd. Vs. UOI Punjab and Haryana High court states that the date of receipt of notice by the addressee is not relevant to determine, as to whether the notice has been issued within the prescribed period of limitation. The expression serve means the date of issue of notice. The date of receipt of notice cannot be left to be undetermined dependent upon the will of the addressee. Therefore, to bring certainly and to avoid attempts of the addressee to evade the process of receipt of notice, the purpose of the statute will be better served, if the date of issue of notice is considered as compliance of the requirement of proviso to **Section 143(2)** of the **Income Tax Act**. In fact that is the only conclusion that can be arrived at to the expression 'serve' appearing in **Section 143(2)** of the **Income Tax Act**.

Conclusion

The expression serve means the date of issue of notice. The date of receipt of notice cannot be left to be undetermined dependent upon the will of the addressee. Service of Notice is valid or not is essentially a question of fact, if a person attempts to evade service of notice then in such case alternative service of notice may be adopted and such attempts to evade notice, if proved then it may be presumed that notice has been served validly. The service of communication of any sort is to fulfil the requirements of principle of natural justice. The principle of natural justice has two important limbs (a) Nemo Judex in Causa Sua and (b) Audi Alteram Partem.

These two are the basic limbs of principles of 'Natural Justice'. No Law can be survived without these two basic pillars.

The principle of natural justice would be incomplete without proper serving of the notice or document containing the summary of what is against the person is brought. Hence, the notice should be served by giving or tendering it directly or by means of communication specified under the Act.

Please give your respective feedback

Warm Regards

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