

Under Service Tax

Giridhar's

Section 89. Offences and Penalties. –

(1) Whoever commits any of the following offences, namely,—

(a) Knowingly evades the payment of service tax under this Chapter; or

(b) Avails and utilises credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of 6 months from the date on which such payment becomes due, shall be punishable,—

(i) in the case of an offence specified in clauses (a), (b) or (c) where the amount exceeds 50 lakh rupees, with imprisonment for a term which may extend to 3 years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than 6 months;

(ii) in the case of the offence specified in clause (d), where the amount exceeds 50 lakh rupees, with imprisonment for a term which may extend to 7 years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than 6 months;

(iii) in the case of any other offences, with imprisonment for a term, which may extend to 1 year.”;

(2) If any person is convicted of an offence punishable under—

(a) clause (i) or clause (iii), then, he shall be punished for the 2nd and for every subsequent offence with imprisonment for a term which may extend to 3 years;

(b) clause (ii), then, he shall be punished for the 2nd and for every subsequent offence with imprisonment for a term which may extend to 7 years.”;

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than 6 months, namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Chapter;

(ii) the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;

(iv) the age of the accused.

(4) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.

90. Cognizance of offences.

(1) An offence under clause section 89(1) (ii) shall be cognizable.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences, except the offences specified in sub-section (1), shall be non-cognizable and bail able.

Circular 171/6/2013-Service Tax dated 17.09.2013

Guidelines for arrest and bail in relation to offences punishable under the Finance Act, 1994

For section 89(1) (i)

In such cases, the Assistant Commissioner or the Deputy Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in-charge of a police station has, and is subject to, under Section 436 of the Code of Criminal Procedure, 1973(2 of 1974). This is in terms of section 91(3) of the Finance Act, 1994, as amended.

For section 89(1) (ii)

In such cases, after following the due procedure of arrest, the arrested person must be produced before the magistrate without unnecessary delay, and definitely within 24 hours. This is in terms of section 91(2) of the Finance Act, 1994, as amended. The magistrate will decide on whether or not to grant bail.

Section 91 read with section 89 must be strictly adhered to. An officer of Central Excise not below the rank of Superintendent of Central Excise can carry out an arrest on being authorized by the Commissioner of Central Excise. To authorize the arrest the Commissioner should have reason to believe that the person proposed to be arrested has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89. The reason to believe must be based on credible material which will stand judicial scrutiny.

Circular No. 1010/17/2015-CX dated 23.10.2015

Revised monetary limits for arrest in Central Excise and Service Tax

arrest of a person in relation to offences specified under clause (i) or (ii) of sub-section (1) of section 89 of the Finance Act, 1994, may be made in cases where the evasion of Central Excise duty or Service Tax or the misuse of Cenvat Credit is **equal to or more than rupees 1 crore**. Central Excise circular no. 974/08/2013-CX and Service Tax circular no. 171/6 /2013-ST both dated 17-09-2013 stand amended accordingly.

Under Central Excise

Section 9. Offences and penalties. -

(1) Whoever commits any of the following offences, namely: -

(a) Contravenes any of the provisions of section 8 or of a rule made under clause (iii) or clause (xxvii) of sub-section (2) of section 37;

(b) evades the payment of any duty payable under this Act;

(bb) removes any excisable goods in contravention of any of the provisions of this Act or any rules made thereunder or in any way concerns himself with such removal;

(bbb) acquires possession of, or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;

(bbbb) Contravenes any of the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products;

(c) Fails to supply any information which he is required by rules made under this Act to supply, or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;

(d) Attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and (b) of this section shall be punishable, -

(i) in the case of an offence relating to any excisable goods, the duty leviable thereon under this Act exceeds 50 lakh rupees, with imprisonment for a term which may extend to seven years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than 6 months;

(ii) in any other case, with imprisonment for a term which may extend to 3 years or with fine or with both.

(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the 2nd and for every subsequent offence with imprisonment for a term which may extend to 7 years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than 6 months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than 6 months, namely:-

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;

(iv) the age of the accused.

Section 9A. Certain offences to be non-cognizable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under section 9, except the offences referred to in sub-section (1A), shall be non-cognizable within the meaning of that Code.

(1A) The offences relating to excisable goods where the duty leviable thereon under this Act exceeds 50 lakh rupees and punishable under clause (b) or clause (bbbbb) of sub-section (1) of section 9, shall be cognizable and non-bailable.

(2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such manner of compounding as may be prescribed:

Provided that nothing contained in this sub-section shall apply to ---

(a) a person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a),(b),(bb),(bbb),(bbbbb) or (c) of sub-section (1) of section 9;

(b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substance Act, 1985 (61 of 1985);

(c) a person who has been allowed to compound once in respect of any of the offence under this Chapter for goods of value exceeding rupees 1 crore;

(d) a person who has been convicted by the court under this Act on or after the 30th day of December, 2005.

Section 20. Procedure to be followed by officer-in-charge of police station.-

The officer-in-charge of a police station to whom any person is forwarded under Section 19 ~~shall either admit him~~ **shall, where the offence is non-cognizable, either admit him** to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.

Section 21. Inquiry how to be made by Central Excise Officers against arrested persons forwarded to them under Section 19. -

(1) When any person is forwarded under Section 19 to a Central Excise Officer empowered to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to enquire into the charge against him.

(2) For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case:

Provided that -

(a) if the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he ~~shall either admit him~~ **shall, where the offence is non-cognizable, either admit him** to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the Central Excise Officer that there is not sufficient evidence or reasonable ground of suspicion ~~against the accused person~~ **in respect of offence which is non-cognizable**, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise Officer may direct, to appear, if and when so required, before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

Circular No. 974/08/2013-CX dated 17.09.2013

Arrest and Bail under Central Excise Act, 1944

Non-bailable offences

3.1 A person is liable to be arrested for non-bailable offence only when the offence committed by him is covered under clause (b) or clause (bbbb) of sub-section 9(1) and the duty involvement exceeds Rs. fifty lakh.

3.2 A list of non-bailable offences where decision to arrest may be taken by the Commissioner is given below:-

- (a) Clandestine removal of manufactured goods;
- (b) removal of goods without declaring the correct assessable value and receiving a portion of sale price in cash which is in excess of invoice price and not accounted for in the books of account;
- (c) Taking Cenvat Credit without the receiving the goods specified in the invoice;
- (d) Taking Cenvat Credit on fake invoices;
- (e) Issuing Cenvatable invoices without delivering the goods specified in the said invoice.

3.3 In all other cases of cognizable and non-bailable offences, covered by clause (b) or clause (bbbb) of sub-section 9(1) where the duty involved exceeds rupees fifty lakhs, which are not listed at paragraph 3.2 above,

e.g. (i) removal of inputs as such, without reflecting such removal in records, on which Cenvat credit has been taken, without payment of amount equal to the credit availed on such inputs.

(ii) Irregular and wrongful availment of benefit of central excise duty exemption by reason of fraud, collusion, willful misstatement, suppression of facts, or contravention of the provisions of the Act or the rules with intent to evade payment of duty, etc, decision to arrest shall be taken by the Commissioner only with the approval of the jurisdictional Chief Commissioner.

Bailable offence

A person is also liable to be arrested in case of non-cognizable and bailable offences, when such an offence is committed.

Powers to grant bail or release an arrested person on execution of bond can be exercised only for offences which are non-cognizable. Any person arrested for non-cognizable offence shall have to be released on bail, if he offers bail, and in case of default of bail, he is to be forwarded to the custody of magistrate.

Circular No. 1009/16/2015-CX dated 23.10.2015

Central Excise Guidelines for launching of Prosecution under the Central Excise Act, 1944 and Finance Act, 1994 regarding Service tax.

Person liable to be prosecuted

3.1 Whoever commits any of the offences specified under 9(1) of the Central Excise Act, 1944 or 89(1) of the Finance Act, 1994, can be prosecuted. Section 9AA (1) of Central Excise Act, 1944 provides that where an offence under this Act has been committed by a company, every person who, at the time offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Section 9AA (2) of Central Excise Act, 1944 provides that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation to Section 9AA provides that

- (a) Company means anybody corporate and includes a firm or other association of individuals and
- (b) director in relation to a firm means a partner of the firm. These provisions under Section 9AA of Central Excise Act, 1944 have been made applicable to Service Tax also vide Section 83 of the Finance Act, 1994.

Monetary limits: Central Excise and Service Tax

4.1 Monetary Limit: In order to optimally utilize limited resources of the Department, prosecution should normally not be launched unless evasion of Central Excise duty or Service Tax, or misuse of Cenvat credit in relation to offences specified under 9(1) of the Central Excise Act, 1944 or 89(1) of the Finance Act, 1994 is equal to or more than **Rs. One Crore**.

4.2 Habitual evaders: Notwithstanding the above limits, prosecution can be launched in the case of a company/assessee habitually evading tax/duty or misusing Cenvat Credit facility.

A company/assessee would be treated as habitually evading tax/duty or misusing Cenvat Credit facility, if it has been involved in 3 or more cases of confirmed demand (at the first appellate level or above) of Central Excise duty or Service Tax or misuse of Cenvat credit involving fraud, suppression of facts etc. in past 5 years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than **Rs. One Crore**.

Offence register (335J) may be used to monitor and identify assessees who can be considered to be habitually evading duty.

4.3 Sanction of prosecution has serious repercussions for the assessee and therefore along with the above monetary limits, the nature of evidence collected during the investigation should be carefully assessed. The evidences collected should be adequate to establish beyond reasonable doubt that the person, company or individual had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens-rea (guilty mind) for committing the offence.

5. Authority to sanction prosecution

5.1 The criminal complaint for prosecuting a person should be filed only after obtaining the sanction of the Principal Chief/Chief Commissioner of Central Excise or Service Tax as the case may be.

5.2 In respect of cases investigated by the Directorate General of Central Excise Intelligence (DGCEI), the criminal complaint for prosecuting a person should be filed only after obtaining the sanction of Principal Director General/ Director General, CEI.

5.3 An order conveying sanction for prosecution shall be issued by the sanctioning authority and forwarded to the Commissionerate concerned for taking appropriate action for expeditious filing of the complaint.