Penalties and Offences

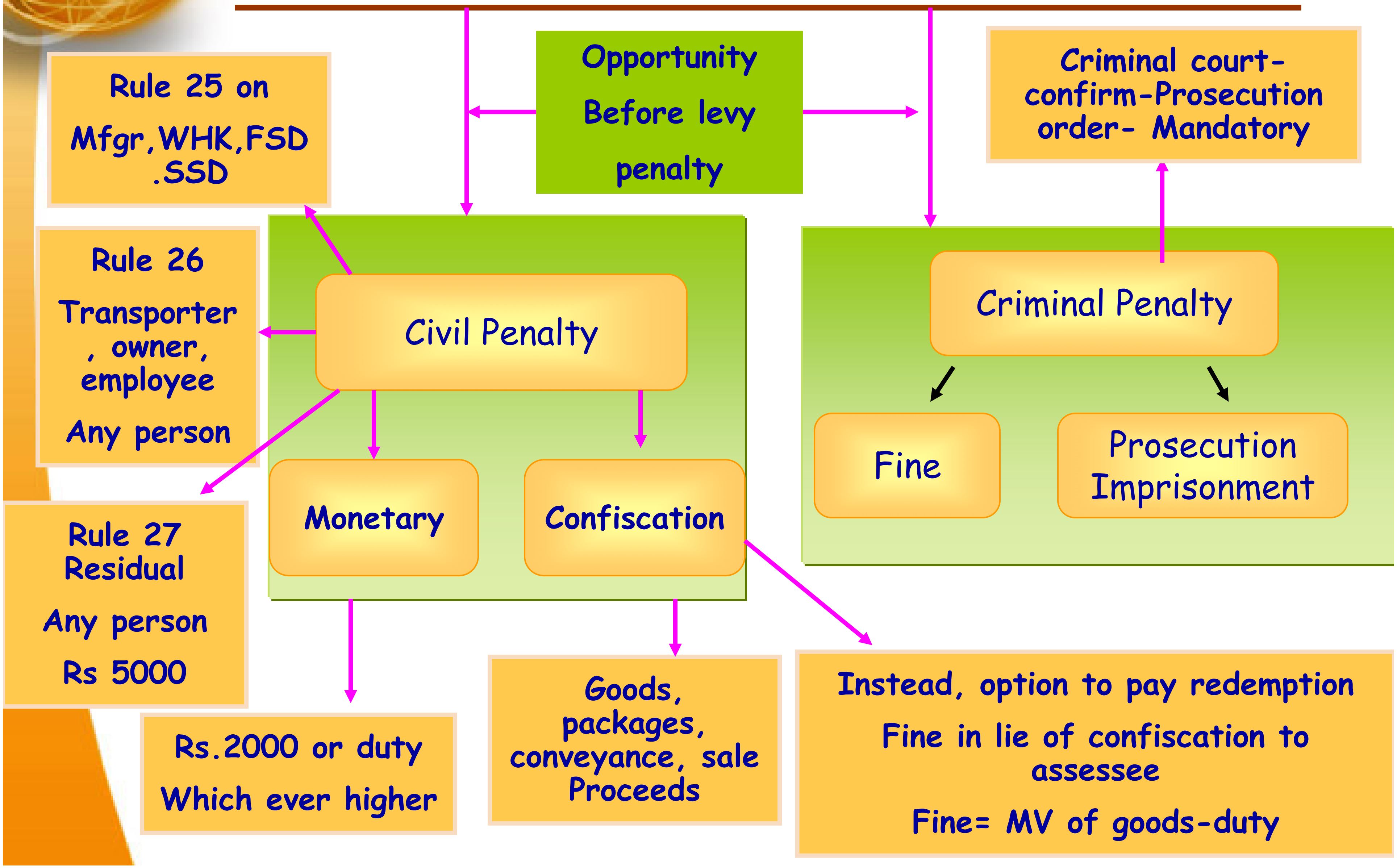
- Offence means violation of law
- Penalty can be levied for offence
- Penalty may be civil penalty or criminal penalty

CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai
rajdhost@yahoo.com

Penalties and Offences

- CEA provides for penalties and punishments for violation of excise law.
- Penalties can be levied for civil and criminal offence.
- Civil Penalty includes fines, confiscation of goods, etc.,
- Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution.
- both departmental penalties and criminal prosecution for same offence is permissible (Section 34A of CEA and section 127 of Customs Act)

Penalties under excise



Offence under central Excise Rule 25

The following are offences:

- **Removing excisable goods in contravention of Excise Rules or notifications issued under the rules.**
- **Not accounting for excisable goods manufactured, produced or stored**
- **Engaging in manufacture, production or storage of excisable goods without applying for registration certificate u/s 6 of CE Act**
- **Contravening any provision of Central Excise Rules or notifications issued under these rules with intention to evade payment of duty.**

Penalties imposable under rule 25

- **Confiscation of contravening goods**
- **Penalties up to duty payable on such contravening goods or Rs.2000 whichever is higher.**

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rajdhost@yahoo.com

- **Penalties can be imposed on manufacturer, warehouse keeper, FSD/SSD**

Rules of Natural Justice

- **Penalty can be levied only by giving opportunity being heard to assessee**

Mandatory penalty in case of fraud, suppression of facts etc.

- **Provisions of Rule 25(1) are subject to section 11AC**
- **Provisions of section 11AC prevail over provisions of rule 25(1).**
- **The penalty u/s 11 AC is mandatory which is equal to duty evaded -** neither more nor less.
- **If the duty, interest and penalty are paid within 30 days from communication of order, penalty payable will be reduced to 25%.**

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rajdhost@yahoo.com

Personal penalty on director / partner / employee/ transporter / driver/Any person etc: Rule 26

- Rule 25 is applicable only to manufacturer, producer, warehouse keeper or registered dealer.
- Penalty on others like transporter, person concealing goods etc. can be levied under rule 26
- Any person who acquires possession concerned in transporting, removing, 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 the Act or rules,
- shall be liable to a penalty up to the duty payable on such goods or Rs 2,000 whichever is greater.
- A director or partner or an employee will be personally liable to penalty if he is personally involved in clandestine removal etc.

Penalty on any person Rule 26(ii)

- New penalty effective 2007
- Penalty on any person
- Non issuance of excisable invoice,
- issuance of excise invoice without delivery of goods
- issuance of any documents whereon receiver takes any ineligible benefit of CENVAT or refund.

A penalty on such offence would be Rs.5000 or amount of benefits, whichever is greater.

Residual Penalty – Rule 27

- For breach of excise rules, if no penalty has been prescribed under Act or rules

penalty would be Rs. 5,000 plus confiscation of goods

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rajdhost@yahoo.com

Confiscation of goods

Section 12 of CEA authorises Central Government to apply provisions of Customs Act These are

- section 105(1) - Powers of search
- section 110 - seizure of goods, documents and things
- section 115 - confiscation of conveyances
- section 118(a) - confiscation of packages containing goods
- section 119 - confiscation of goods for concealing goods
- section 120 - confiscation of goods even if form changes
- section 121 - confiscation of sale proceeds of contravening goods
- section 124 - issue of show cause notice before confiscation of goods
- section 142(1)(b) and 142(1)(c)(ii) - Recovery of duty
- section 150 - procedure for sale of goods.

Contravening goods liable to confiscation

- Under rule 25 of CE, following goods are liable to confiscation –

- **Goods removed in contravention of Central Excise rules,**
- **Goods not accounted for**
- **Goods on which Cenvat credit is wrongfully taken**
- **Goods manufactured without registration of the factory.**

Confiscation of Conveyance

- Following conveyances are liable to confiscation under section 115(1) of Customs Act, as made applicable to Central Excise:
  - any conveyance from which goods are thrown overboard or destroyed to prevent seizure
  - Conveyance which is required to land or stop for inspection but fails to do so.
  - Conveyance by which warehoused goods are cleared for export, but goods is unloaded without permission.

Confiscation contd.,

Confiscation of packages

- **When the goods are liable for confiscation, the packages in which contravening excisable goods are packed, such packages are also liable for confiscation.**

Confiscation even form changes

- **Contravening goods are liable for confiscation even if there is any change in its form for example mixing with other.**

Confiscation of sale proceeds

- **If the contravening goods are found to have been sold, sale proceeds of such sale are liable to confiscation**

Redemption fine in lieu of confiscation

- Whenever confiscation of goods is ordered, the adjudicating officer *may* give option to owner of goods to pay 'fine' in lieu of confiscation.
- After payment of redemption fine; the goods are returned to the owner of goods.
- Owner/person from whom goods seized has to pay duty charges and redemption fine equal to market price less duty- Section 125 of Customs Act.

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rajdhost@yahoo.com

Procedure after confiscation Rule 28(1)

- After confiscation, the goods shall vest in Central Government.
- The Central Excise Officer adjudging confiscation shall take and hold possession of things confiscated.
- Every Police Officer is required to assist excise officer in taking and holding such possession. (Parallel provision in Customs section 126.)
- If the assessee does not pay fine in lieu of confiscation, the goods will be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct. [Rule 29].
- If the assessee exercises option to pay fine in lieu of confiscation, he may be asked to pay storage charges as may be determined by adjudicating officer. [Rule 30]

Prosecution for Offences

Section 9 defines following as offences punishable:

When

1) Possession of "Tobacco" in excess of prescribed quantity;
2) Evading payment of excise duty;
3) Removal any excisable goods in contravention of any provisions of CEA / Rules or in anyway concern himself with such removal;
4) -- Acquiring possession of, or

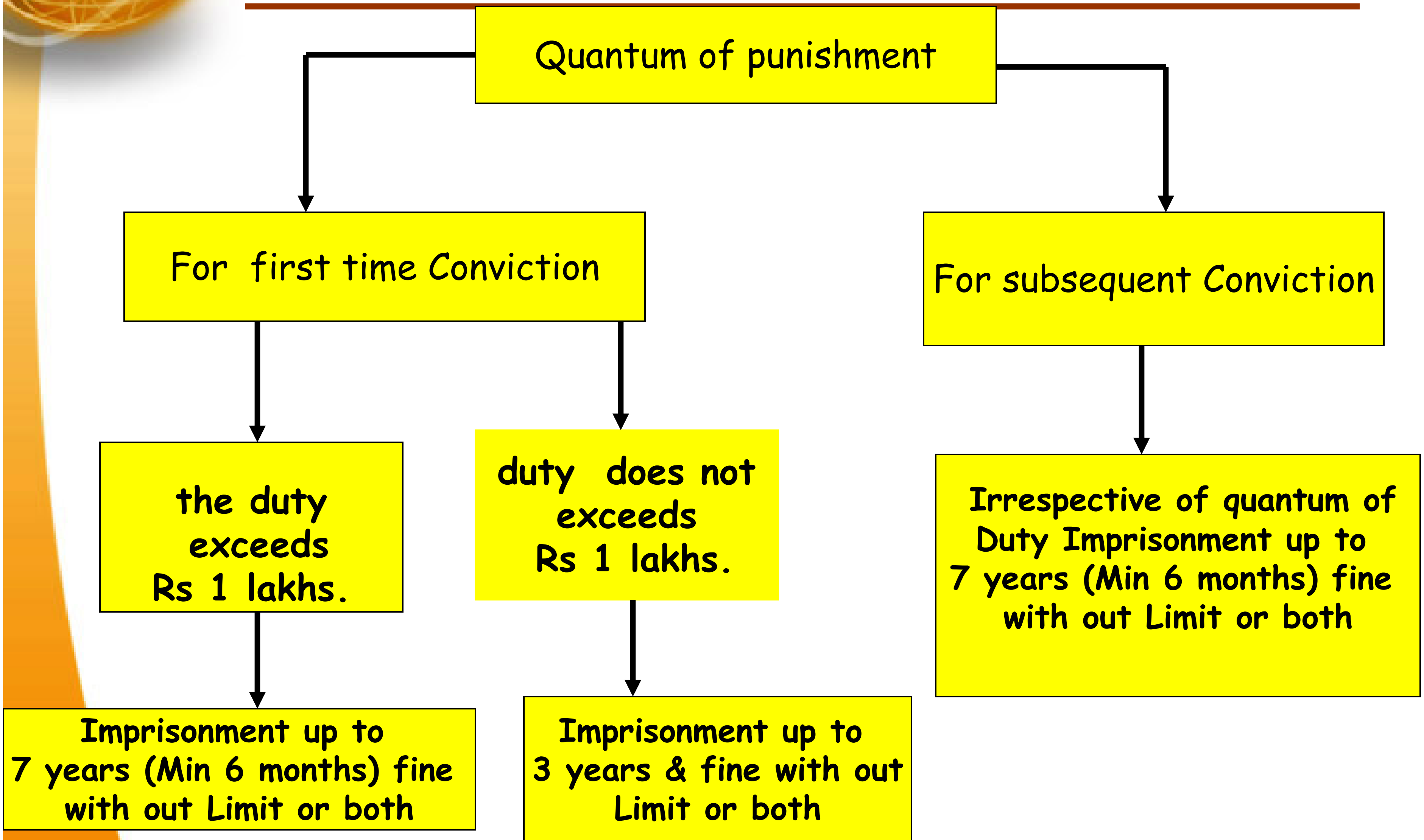
-- In anyway concerning himself in Transporting/Depositing/ Keeping/Concealing, selling or purchasing, or

-- In any other manner dealing with

goods which he knows or has reason to believe are liable to confiscation;

5) Contravention of any provisions of Cenvat Credit Rules, 2004;
6) Failure to supply the information which he is required to supply under the act or supplying false information;
7) Attempting to commit or abetting the commission of, first two categories of offences.

Quantum of punishment



Imprisonment less than 6 months when

If there are special and adequate reasons for granting lesser punishment.

The following are shall not be treated as adequate reasons

- First time offence
- Age of the accused
- Accused is not a principal offender
- Punishment for second time for the same offence under CE Act

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rajdhost@yahoo.com

Further punishments Sec 9B/sec 135 B-

Court has powers to order for further punishments like revocation of offer of redemption of fine and Publication of names, place of business or residence, nature of contravention etc in news paper.

Burden of proof

- **The burden of proof is on Excise department to prove the commitment of offence by a person.**
- **Similarly accused has to prove that there was no culpable state of mind like intention, knowledge, belief etc.**
- **Both proofs should be beyond reasonable doubt.**

Culpable Mental State – Rebuttable Presumption Sec 9C

- **If an act for which accused is charged can constitute offence, only when it was done with Culpable Mental State (Guilty State of Mind), then Court shall presume existence of such culpable mental state on the part of the accused. *(And on that basis, Court shall be entitled to pass prosecution order)***

Defense available to accused::

- *He can prove **that he had no such state with respect to act charged as offence.***
- **[Prove: Beyond Reasonable Doubt (not that is based on probability)**

relevancy of Statement before Excise Customs Officer [Section 9D of CEA – parallel section 138B of Customs Act].

Statement made and signed before any Central Excise Officer / customs officer of gazette rank is allowed as evidence in the prosecution as follows

- In case of a person who is dead or if he cannot be found or whose presence cannot be obtained without undue delay or expenses, the statement *will be* allowed as evidence
- In case of person who is present before the Court and is examined as witness, Court *may* admit the statement if it is of the opinion that the statement should be admitted in the interest of justice.
- Discretion is given to Court in case of statements made before Excise Officer, only if such person is examined as witness.
- The provisions apply to adjudication and appeal proceedings also.

Presumption regarding Documents seized from a person

- **Any document seized from a person shall be *presumed* to be true about the contents therein.**
- **Signature and other part of hand written document on such seized document, purporting to have been of a person or reasonably assumed to be of that person shall be presumed to be of that person.**
- **If such person claims that the document is not true or not signed by him, *the burden of proof* is on him**

Computer print outs

Statement printed by Computer is admissible if

- Computer print out was produced during the period when the computer was used for storing and processing the information
- The information contained in the statement was regularly supplied to computer during the period
- computer was operating properly during the period or breakdowns were not significant to affect accuracy of documents
- The print out is reproduced in ordinary course of activities
-

CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai

rajdhost@yahoo.com

Central excise Offence is non-cognizable [Section 9A of CEA

- **As per section 2(c) of Criminal Procedure Code, 'cognizable offence' means an offence for which a police officer may arrest without warrant.**
- **Offences under section 9 of CEA are non-cognizable.**
- **For offences under excise action will be taken by police only at the instance of CEO.**

Offences by Companies Sec 9AA

- Offence committed by a Company – The person who, at the time of commissioning of offence, was in charge of / responsible for conduct of the business of the company
- shall be deemed to be guilty
- shall be liable to be proceeded against & punished accordingly.

Defenses available to such person:

- i) He can prove that offence was committed without his knowledge or
- ii) He can prove that he exercised due diligence to prevent the commission of that offence

Offences by Companies Sec 9AA

- **Offence committed by a Company – Dept prove that it was committed with the consent/involvement of or it is attributable to neglect on part of**
- **-Any Director -Manager -Secretary -Other Officer of Company**

then, such person/s

- **shall be deemed to be guilty**
- **shall be liable to be proceeded against & punished accordingly.**

Offences by Companies Sec 9AA

- **If offence is committed by Firm, then same principles (as stated above) shall apply – "Director" in relation to firm shall mean a "Partner in Firm".**
- **Same principles will also be applicable if offence is committed by Other Association of Individuals / Any Body Corporate. - Expl to Sec 9 AA**

CA N Raja Sekhar M.Com FCA DISA (ICAI) **Chennai**

rajdhost@yahoo.com

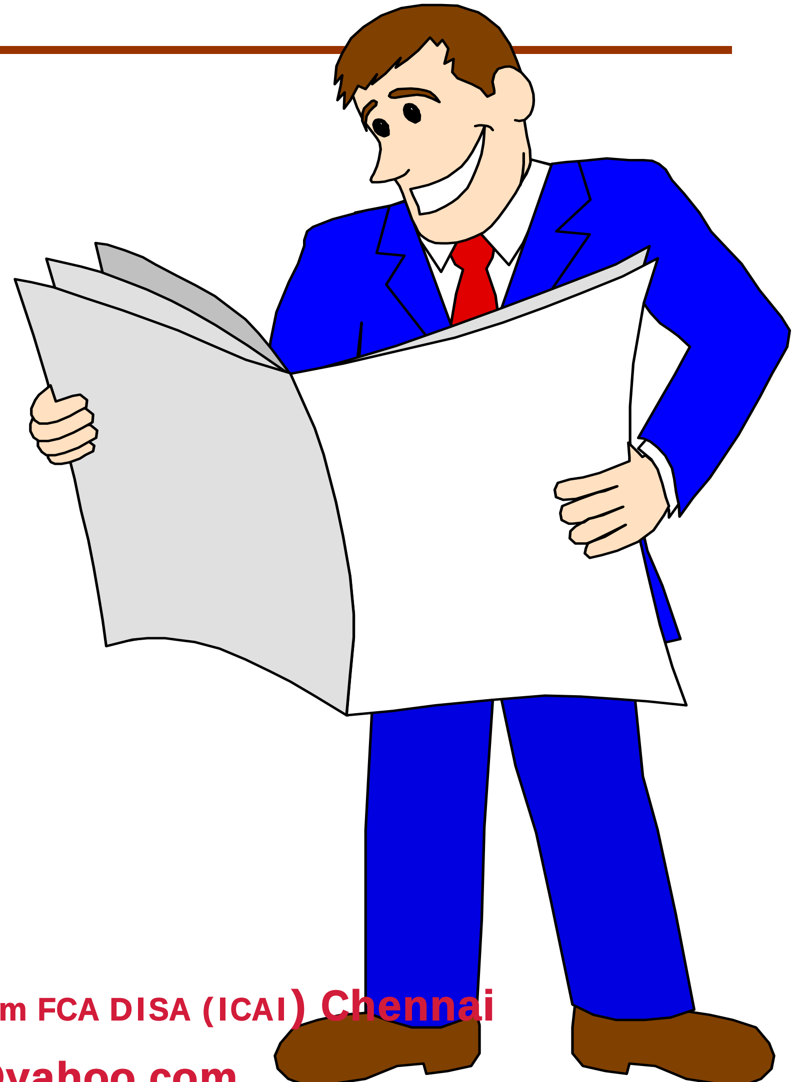
Compounding of Offence Sec 9A(2)

- **Any offence committed from sec 3 to Sec 12 of CE Act may, either before or after 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 as may be prescribed.**

Power of Central Government to Publish Names of persons (new section 37 E)

- **This section provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest.**
- **The Central Government may publish name of any person and any other particulars relating to any proceedings in the public interest. The Government can do the publication in such manner as it thinks fit.**
- **The publication in respect to penalty shall be only after appeal time limit is expired or appeal is disposed of.**
- **In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.**

End of Chapter



CA N Raja Sekhar M.Com FCA DISA (ICAI) **Chennai**

rajdhost@yahoo.com