

**ADMINISTRATION OF PROSECUTION
AND PENALTIES IN CENTRAL
EXCISE AND SERVICE TAX**

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**PUBLIC ACCOUNTS COMMITTEE
(2016-17)**

SIXTY- THIRD REPORT

SIXTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

PAC NO. 2096

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PUBLIC ACCOUNTS COMMITTEE
(2016-17)

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IN CENTRAL EXCISE AND
SERVICE TAX**

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**



Presented to Lok Sabha on: 16.12.2016.

Laid in Rajya Sabha on: 16.12.2016

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2016/ Agrahayana, 1938 (Saka)

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**Composition of Sub-Committee - III (Direct and Indirect Taxes) of the Public
Accounts Committee (2016-17)**

Convenor	:	1.	Shri Nishikant Dubey
Alternate Convenor	:	2.	Shri Satyavrat Chaturvedi
Members	:	3.	Shri Shivkumar C. Udasi
		4.	Prof. Richard Hay
		5.	Shri Sukhendu Sekhar Roy
		6.	Shri Ajay Sancheti

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2015-16)

Prof. K.V. Thomas - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Sudip Bandyopadhyay
4. Shri Ranjit Singh Brahmputra
5. Shri Nishikant Dubey
6. Shri Gajanan Kirtikar
7. Shri Bhartruhari Mahtab
8. Shri Ramesh Pokhriyal "Nishank"
9. Shri Neiphiu Rio
10. Shri Dushyant Singh
11. Shri Janardan Singh Sigriwal
12. Dr. Kirit Somaiya
13. Shri Anurag Singh Thakur
14. Shri Shivkumar Udasi
15. Dr. P. Venugopal

RAJYA SABHA

16. Shri Naresh Agrawal
17. Shri Satyavrat Chaturvedi
18. Shri Anil Madhav Dave
19. Shri Vijay Goel
20. Shri Bhubaneswar Kalita
21. Shri Shantaram Naik
22. Shri Sukhendu Sekhar Roy

Composition of Sub-Committee – III (Direct and Indirect Taxes) of the Public
Accounts Committee (2015-16)

Convenor	:	1.	Shri Nishikant Dubey
Alternate Convenor	:	2.	Dr. Kirit Somaiya
Members	:	3.	Shri Sharitaram Naik
		4.	Shri Ramosh Pokhriyal "Nishank"
		5.	Shri Sukhendu Sekhar Roy

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2014-15)

Prof. K.V. Thomas - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Sudip Bandyopadhyay
4. Shri Ranjit Singh Brahmputra
5. Shri Nishikant Dubey
6. Shri Gajanan Kirtikar
7. Shri Bhartrohari Mahtab
8. Shri Ramesh Pokhriyal "Nishank"
9. Shri Neiphiu Rio
- 10[†]. Shri Dushyant Singh
11. Shri Janardan Singh Sigriwal
- 12[‡]. Shri Shiv Kumar Udasi
13. Dr. Kirit Somaiya
14. Shri Anurag Thakur
- 15[§]. Dr. P. Venugopal

RAJYA SABHA

16. Shri Satyavrat Chaturvedi
17. Shri Vijay Goel
18. Dr. Satyanarayan Jatiya
19. Shri Bhubaneswar Kalita
20. Shri Shantaram Naik
21. Shri Sukhendu Sekhar Roy
22. Shri Ramchandra Prasad Singh

[†] Elected w.e.f. 3rd December, 2014 vice Shri Rajiv Pratap Rudy who has been appointed as Minister w.e.f. 9th November, 2014.

[‡] Elected w.e.f. 3rd December, 2014 vice Shri Jayant Sinha who has been appointed as Minister w.e.f. 9th November, 2014.

[§] Elected w.e.f. 3rd December, 2014 vice Dr. M. Thambidurai who has been chosen as Hon'ble Deputy Speaker, Lok Sabha and has since resigned from the membership of the Committee.

INTRODUCTION

1. I, the Chairperson, Public Accounts Committee, having been authorised by the Committee, do present this Sixty-Third Report (Sixteenth Lok Sabha) on "**Administration of Prosecution and Penalties in Central Excise and Service Tax**" based on C&AG's Report No. 29 of 2014 relating to Ministry of Finance-Department of Revenue.

2. The above-mentioned Report of the Comptroller and Auditor General of India was laid on the Table of the House on 28th November, 2014.

3. The Public Accounts Committee (2014-15) took up the subject for examination and report and the subject was carried forward for examination by successor Public Accounts Committee during their term (2015-16) and allocated the subject to Sub-Committee-III (Direct and Indirect Taxes) of PAC (2015-16) under the Convenorship of Shri Nishikant Dubey, MP and Member of PAC which took-up examination of the aforementioned Audit Report, procured written replies and took evidence of the representatives of the Ministry of Finance-Department of Revenue and Central Board of Excise and Customs (CBEC) on the subject at their sitting held on 28th January, 2016. The Sub-Committee considered and adopted the draft Report on the subject at their sitting held on 14 December, 2016 and thereafter, the Public Accounts Committee (2016-17) considered and adopted this Report at their sitting held on 15 December, 2016. The minutes of the Sitzings are appended to the Report.

4. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type and form Part- II of the Report.

5. The Committee thank the Sub-Committee for taking oral evidence and obtaining information on the subject as well as finalizing and placing the draft Report before the Main Committee.

6. The Committee would also like to express their thanks to the representatives of the Ministry of Finance-Department of Revenue and the Central Board of Excise and Customs (CBEC) for tendering evidence before them and furnishing the requisite information to the Committee in connection with the examination of the subject.

7. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India and the Committee Secretariat in preparation of the Report.

NEW DELHI;
15 December, 2016
24 Agrahayana, 1938 (Saka)

PROF. K.V. THOMAS
Chairperson,
Public Accounts Committee.

REPORT

PART – I

I. Introductory

Central Excise and Service Tax laws provide stiff punishments of imprisonment and fines for specific violations. Such an imposition is possible only by a Court of Law. These are independent of the penalties and confiscation that can be imposed by Excise authorities through departmental adjudication. In Central Excise, prosecution sets in motion a legal process by which Government seeks to ensure punishment of companies and persons concerned with evasion of Central Excise duty. The Prosecution Cell at the Commissionerate headquarters is responsible for the entire prosecution proceedings as and when sanctioned by the Commissioner against any Proprietor, Firm, Company or Individual who are found guilty of an offence punishable with imprisonment in terms of Section 9 of the Central Excise Act, 1944. The responsibility of this Cell starts from arresting a person found guilty, remanding him to judicial custody, to arrange for a speedy and successful trial before the competent Magisterial Court.

2. Central Board of Excise and Customs (CBEC) set up under the Central Boards of Revenue Act, 1963 is a part of the Department of Revenue under the Ministry of Finance, Government of India. Member (Central Excise) and Member (Service Tax) in the CBEC have the overall charge of the prosecution relating to the respective levies. Directorate General of Central Excise Intelligence (DGCEI) is the apex intelligence organisation functioning under CBEC, Department of Revenue, Ministry of Finance, entrusted with detection of cases of evasion of duties of Central Excise and Service Tax.

II. Audit Review

3. As prosecution and penalty are important deterrent mechanisms, it was intended to examine the administration and implementation of prosecution and penalty machinery, by CBEC and its field formations for combating tax evasion. To achieve this, it was sought by examining current structures, its utilisation and effectiveness. Audit examined records related to the period FY 11 to FY 13 in respect of Central Excise and from FY 12 to FY 13 in respect of Service Tax prosecution cases made available by 46 Commissionerates out of the 104 Commissionerates and the records at the DGCEI zonal units.

4. Section 9 of the Central Excise Act, 1944 defines commission of the following offences as punishable:-

- a) contravening any of the provisions of Section 8 or of a rule made under specific clauses sub-section (2) of Section 37;
- b) evading payment of duty under the Act;

- c) removing excisable goods or concerning himself with such removal in contravention to the Act and Rules;
- d) acquiring or in any way concerning himself with transporting, depositing, concealing, selling, purchasing or otherwise dealing with excisable goods where he knows or has reason to believe that the goods are liable to confiscation under the Act and Rules;
- e) contravening any provision in relation to Cenvat Credit under the Act and Rules;
- f) failure to supply information or knowingly supplying false information; and
- g) attempting to commit or abetting commission of an offence relating to evasion of duty or transit of goods or restriction on storage of goods or non-registration of a unit.

5. Section 89 of the Finance Act, 1994 defines the following offences as punishable in relation to Service Tax:

- a) knowingly evade payment of service tax;
- b) availing and utilising Cenvat credit without actual receipt of taxable service or excisable goods either fully or partially;
- c) maintaining false books of accounts, failure to supply any information or supplying false information; and
- d) collecting an amount as service tax but failure to deposit it for a period of more than six months.

6. The punishable offences by a company or firm are provided under Section 9AA of the Central Excise Act. This Section provides that:-

- 1) Where an offence has been committed by a company, every person who, at the time the 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 unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
- 2) Where an offence 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 also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

7. Section 9AA is a deeming provision. If two vital ingredients are satisfied i.e. 'an offence' has been committed and the accused was 'in charge of' the company, then he is deemed to be guilty. The proviso to the sub-section (1) enables a person in charge to prove his innocence. Thus, the prosecution need not prove that the contravention was done

intentionally and deliberately by the accused. It would be sufficient for the prosecution to establish that 'an offence' has been committed and the accused is the 'person-in charge' of the day-to-day functioning of the company.

8. Offences under Section 9(1)(b) {evading payment of excise duty} and Section 9(1)(bbbb) {violation of Cenvat Credit Rules} of the Central Excise Act are cognizable and non-bailable, if the duty exceeds fifty lakh (with effect from 10 May 2013). Other offences are non-cognizable. Except for the cognizable offence of collecting Service Tax but not depositing it with Government for more than six months under Section 90(1) of Finance Act, 1994 other offences specified in Section 89 are non-cognizable.

9. Section 9A(2) of Central Excise Act, 1944 provides the Chief Commissioner of Central Excise to compound any offence under the Act. An amendment to Section 83 of the Finance Act, 1994 with effect from 8 April 2011 provides for the compounding of offences relating to Service Tax. 'Compound' means to settle amicably. Compounding is essentially a compromise between the prosecuting authority and the prosecuted entity. The prosecuted person/entity agrees to pay the composition amount through this procedure in lieu of dropping prosecution. Compounding can be either before or after the institution of prosecution procedures. If the case is pending, then the Court is informed about the compromise arrived and requested not to proceed with the case.

10. In the following cases, compounding is not permissible: -

- a) If a person has been allowed to compound offence once in respect of offences under Section 9(1)(a),(b),(bb),(bbb),(bbbb) or (c) of Central Excise Act, 1944.
- b) In case of Excise offences under Narcotics Drugs and Psychotropic Substances Act, 1985.
- c) If a person was allowed to compound case once in respect of any offence for goods of value exceeding rupee one crore.
- d) If a person was convicted by the Court under Central Excise Act, 1944 on or after 30 December 2005.

Central Excise (Compounding of Offences) Rules, 2005 and Service Tax (Compounding of Offences) Rules, 2012 prescribe the respective compounding procedures.

11. Against this backdrop, the PAC (2016-17) selected the subject as reported in C&AG's Report No. 29 of 2014 for detailed examination and report. Subsequently, the subject was referred to the Sub-Committee on Direct and Indirect Taxes i.e. Sub-Committee-III dealing with subjects on taxation. Subsequently, the Committee obtained background note and requisite replies and some other clarifications from the Ministry of Finance, Department of Revenue and Central Board of Excise and Customs (CBEC). The Committee took oral evidence of the representatives of the Ministry of Finance, Department of Revenue and Central Board of Excise and Customs (CBEC) on 28.01.2016 and obtained

information on the subject. Based on the information gathered, the Committee proceeded with examination of the relevant issues in detail as outlined in the succeeding paragraphs.

Chapter – II

Administration of Prosecution and Penalties

A. Launching of Prosecution

12. The main guidelines for launching the prosecution are:-

- i) Launching of prosecution shall be with the final approval of the Chief Commissioner.
- ii) Prosecution should not be launched in cases of technical nature or difference in interpretation of law. The monetary limit for launching prosecution has been enhanced to ₹ 25 lakh w.e.f. 12 December 1997. In the case of habitual offenders prosecution should be considered irrespective of the monetary limit.
- iii) Prosecution should normally be launched immediately after adjudication has been completed. It should not be kept in abeyance on the ground that the party has gone in appeal/revision.

B. Procedure for Prosecution

13. Procedure envisaged for prosecution is as follows:-

- i) An investigation report for the prosecution should be carefully prepared and signed by an Assistant Commissioner, endorsed by the Commissioner and forwarded to the Chief Commissioner for decision within one month of the adjudication of the case. A criminal complaint in a Court of Law should be filed only after the sanction of the jurisdictional Chief Commissioner has been obtained.
- ii) Prosecution, once launched, should be vigorously followed.
- iii) To ensure the deterrent effect of prosecution, department must secure convictions with utmost speed through regular monitoring of the progress of the prosecution.
- iv) Ensure avoiding delays in the court proceedings due to non-availability of the records required for production before the Magistrate.
- v) A Court of Law has the power to publish name, place of business etc. of a person convicted under the Act but exercises it sparingly. Department should make a prayer to the Court to invoke this Section in respect of all persons convicted under the Act.
- vi) A Prosecution Register may be maintained in the Prosecution Cell of the Commissionerate Headquarters.

C. Cases

14. There were 593 prosecution cases pending as on 31 March 2013 in 46 selected Commissionerates involving a money value of ₹ 2,011.56 crore as shown in the table below:

Year	Prosecution cases							
	Opening balance		Additions		Disposal		Closing balance	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
2009-10	505	1,79,973.88	9	2,053.81	5	27,143.57	509	1,54,884.12
2010-11	509	1,54,884.12	47	15,154.80	7	279.75	549	1,69,759.17
2011-12	549	1,69,759.17	39	15,126.35	4	98.12	584	1,84,787.40
2012-13	584	1,84,887.40	35	21,542.53	26	5,273.73	593	2,01,156.19

15. It was observed that the pace of the disposal of the prosecution cases was slow in comparison to the additions during the FY 10 to FY 13 and a total of 155 cases involving revenue of ₹ 128.60 crore were pending in Surat I and Ahmedabad I Commissionerates alone which constituted 26 per cent and 6 per cent of the total prosecution cases and amount involved in the cases respectively as shown below:

Sl. No.	Commissionerate	Prosecution cases	
		No.	Amount
1.	Surat I	114	9,689.37
2.	Ahmedabad I	41	3,170.15
3.	Ludhiana	35	1,319.91
4.	Ghaziabad	29	10,180.84
5.	Indore	24	11,950.53
6.	Jaipur I	24	8,351.75
7.	Delhi I	21	9,137.91
8.	Mumbai III	20	1,984.16
9.	Bhopal	19	33,477.03
10.	Chandigarh I	19	9,933.54
	Total	346	99,195.19

16. Audit noted that the long pendency was notwithstanding the fact that statistical details of prosecution cases were collected on monthly basis by Board/Directorate of Legal Affairs from its field formations through monthly technical report (MTR).

17. The Ministry in their Background Note, furnished to the Committee stated that with respect to Surat I Commissionerate, it had been reported that once the prosecution was filed in the court of law, it became sub-judice matter and the same was being monitored accordingly. However, the same could be pursued with the respective Chief Judicial Magistrate of Court by the jurisdictional Assistant/Deputy Commissioner of Central Excise & Service Tax and with respect to Ahmedabad I Commissionerate, it had been reported that the disposal of the pending prosecution case was at entire discretion of the court.

18. During oral evidence, Member, CBEC reiterated that:

"The cases which are lying in Surat and Ahmedabad are cases where the cases have already been filed in the court of law. So it is not that they are pending for want of action by the Chief Commissioner. In most of the cases the pendency is with the courts. The Audit also recognised the number of cases where they have been decided by the courts after a gap of 26 years. Once it has gone to the court, we are not in control of it. Secondly, as regards the revenue, the revenue is taken care of in the adjudication order. The duty may have been recovered or may not have been recovered. It is only that we want to prosecute these people. But they are not necessarily linked with the amount of duty involved in these cases."

19. The Ministry further stated that Member (Central Excise) acknowledged that there were several prosecution cases where there was significant delay. However, once a prosecution case had been filed in a court of law in respect of any offence, the State had become a party to the proceedings and only the court had the authority to bring the same to a close, unlike in a civil suit. Circular of 4th April, 1994 depicts the position in this regard that only so long as the case has not been filed, the department had the authority to take decisions concerning proceeding with the same or otherwise. The matter regarding withdrawal of prosecution cases had on earlier occasion been taken up with the Department of Legal Affairs, Ministry of Law and Justice and the advice received was along the same lines. However, as recently as in 2012, the Hon'ble Supreme Court had held that when an adjudication fails, criminal proceeding also would not lie. CBEC was examining whether to take up the issue once again with the Ministry of Law and Justice, citing this decision.

20. During oral evidence, the CBEC Chairperson stated as under:

"....we have revamped all our old circulars and taken note of all the recommendations which the Audit has given in its report and incorporated almost all the ten recommendations in a comprehensive circular which we issued on the 23rd October, 2015. This is a circular which has taken on board every one of the recommendations and tried to plug the loopholes which have been pointed out in the

functioning of the process of prosecution in the Central Board of Excise and Customs. You might have noticed in the circular that there are specific recommendations, be it the need for ensuring the long pending prosecution cases which are reviewed periodically. This is para 7 of the circular which specifically deals with that. The point made regarding delay in submission of investigation report is dealt with in and para 6 of the circular specifically imposes timelines. This is recommendation considering the pendency of prosecution cases during the monthly meetings. We have incorporated this in para 7 of the circular. This is on the need for fixing the responsibility of those who are not following the prescribed instructions. We have tried to fill up this gap in para 13. On the need for having specialised training programme, we have again tried to adopt this in the circular. The point which I making is that we have tried to set right the position by a comprehensive circular which addresses these concerns."

21. Further, he stated as under:

"For the future, we have tried to address the problem at least by ensuring that there is one comprehensive circular. All the previous circulars have been superseded and done away with because multiplicity of circulars is also causing confusion. So, this is the single most important step which we have taken, thanks to the Audit Report. The point which I want to make is that, in cases where we have launched prosecution, the matter is entirely thereafter in the hands of the courts. We have special public prosecutors in all these places. The problem thereafter is of the delay in the entire prosecution process which has been pointed out of cases pending for several years. This is a reflection as much on our inability to push the case forward as it is on the ability of the courts not to be in a position to handle such volumes of prosecution simply because they are overworked. We file these cases in Special Economic Offences Courts which are designated for this purpose across the country and it is a problem in the manner in which we have been able to ensure that the prosecution process comes to a logical conclusion. This delay results in witnesses not being there and the persons whom we are proceeding against passing away in the interregnum because of the sheer delay and it is a challenge for us to ensure that the process of prosecution gets expedited. This is again a broad point which I am making to explain the long pending prosecution itself."

22. When enquired about the implementation of the said Circular in the field formations and the feasibility of the same, the Chairperson, CBEC, during oral evidence inter-alia stated that monthly reports were also being incorporated and the details were being submitted online. Further when details were sought about punitive action being taken against concerned officials and with whom such responsibility lay, the Chairperson, CBEC inter-alia stated that the responsibility lay with the Chief Commissioner or the Director and when the Chief Commissioner launches an investigation after sanction and the prosecution hadn't been done then the Chief Commissioner can take action.

23. During oral evidence, it was enquired upon expediting cases in various courts and whether it was due to the negligence of some officials and responsibility fixed upon them, the CBEC Chairperson, deposed as under:

"Yes, may not be in all the cases, but definitely this is happening. We instruct our prosecutor to fill application for expeditious hearing. They are binding on the officers of the department. They are sent after the approval of the Finance Minister. This does not create a new law. It asks the officers to follow the procedures. All our circulars are binding on the officers, we have tried to address this problem. We have said that in cases where on identical issues proceedings or a Supreme Court order or a High court order has been accepted then the Principal Chief Commissioner or Director Generals should give directions to the concerned Commissionerate to request the public prosecutor to file an application for withdrawal."

24. Further, supplementing the CBEC Chairperson, Member, CBEC explaining withdrawal of a case, during oral evidence, deposed as under:

"Sir, there are two situations. One is where the prosecution has been sanctioned but the complaint has not yet been filed in the court of law. The Audit has pointed out that there are a number of cases where there has been long delay and the cases have not yet been filed. In case, we want to review those cases whether it is a fit case for prosecution or not and if not then we withdraw those cases. The second situation is where the prosecution has already been launched in the court of law. There could be a situation where a person has asked for compounding of offences. He is gone to Chief Commissioner and said that he wants to compound his offence. That is one situation. Second situation could be that there is an adjudication order which is there for him where the higher court of law has dropped the proceedings. If the adjudication has dropped then there is no question of pursuing the prosecution because the prosecution need more stringent application of law. There we have to go to the Minister, the competent authority, with that case and seek withdrawal. Sir, they are different. In the first situation where the complaint has not been filed there the call will be taken by the member concerned of the policy wing to see whether the complaint need not be filed now. But in the second situation, because it is already before the court of law, it is the minister who is the competent authority to decide whether a particular case needs to be withdrawn or not. Both the situations we have covered in para 10. We have also called a report from our field officers. Sir, as far as the prosecution is concerned, it is all manual. Only the monthly report is coming online from the Commissionerate to the Chief Commissioner's office to the Board Office. Yes, Sir. It is there. But prosecution decisions are not there. Only High Court cases and Supreme Court cases are there."

D. Prosecution in cases involving meagre revenue

25. As per CBEC's letter dated 26 July 1980, a monetary limit of ₹ 10,000 was prescribed for launching of prosecution in order to avoid prosecution in minor cases. This limit was revised to rupee one lakh vide Circular dated 9 August 1990. Further, with effect from 4 April 1996, the limit was revised to ₹ 5 lakh. The monetary limit for prosecution is ₹ 25 lakh with effect from 12 December 1997. However, in the case of habitual offenders the above limit is not applicable.

26. During oral evidence, the CBEC Chairperson stated as under:

"The Audit has also pointed out about habitual offenders. In this circular, in para 4.2, we have defined as to who are the habitual offenders. We have addressed the shortcomings largely for the future. The Audit has specifically pointed out cases where there has been delay."

27. During oral evidence, the Member, CBEC stated as under:

"We have done it. We have called for the report from all the field formations the total number of cases which are pending for long and the amount involved is less than ₹ Five lakh."

E. Delay in submission of Investigation report

28. As per para 3(i) of the Board's Circular dated 9 August 1990, in all cases where the Commissioner of Central Excise in charge of judicial work was satisfied that prosecution should be launched, a proposal/investigation report for the purpose of launching prosecution should be forwarded to the Chief Commissioner for decision within one month of the adjudication. On examination, it was observed that in 138 prosecution cases in 27 Commissionerates, the forwarding of investigation reports suffered delays ranging from a month to over 10 years to obtain the mandatory sanction of the Chief Commissioner to launch prosecution.

29. During examination, the case of M/s. P.K. Profile (P) Ltd. Fatehpur, manufacturers of goods covered in Chapter 72 of Central Excise Tariff Act, 1985 in Lucknow Commissionerate was highlighted by Audit, noticing that the SCN involving duty of ₹ 1.57 crore was adjudicated on 4 July 2000. However, proposal including investigation report was forwarded to Chief Commissioner only on 9 September 2010 i.e., after a delay of more than ten years.

30. The Ministry, in their Background Note furnished to the Committee, stated that with respect to Lucknow Commissionerate for M/s P.K. Profile (P) Ltd. it was reported that the case file of M/s P.K. Profile (P) Ltd., Fatehpur, was with Central Excise, Allahabad, as previously Central Excise Division, Raebareli, was under the jurisdiction of Allahabad. After the change of jurisdiction from Allahabad to Lucknow Commissionerate and after further processing at their end, the proposal could be received from Lucknow Commissionerate in September, 2010.

31. During oral evidence, when enquired about whether it was done in the name of increasing efficiency or to create hurdles, the CBEC Member, during oral evidence, stated

as under:

"Sir, I admit it is not a logical answer. It is a very feeble excuse. I admit it."

F. Approval by sanctioning authority

32. As per para 2(i) of Board's Circular dated 9 August 1990, prosecution should be launched with the final approval of the Chief Commissioner after the case has been carefully examined by the Commissioner in the light of the guidelines. The sanction accorded to launch a prosecution may appear to be an administrative act. However, as decided by CEGAT in UOI vs. Greaves Ltd., without prior approval of the Chief Commissioner, prosecution cannot continue and the accused has to be acquitted. As per Board's direction, the prosecution should not be delayed or kept in abeyance for confirmation of demands in appeal. Hence, the decision of non-initiation of prosecution until the decision on appeal is not in consonance with the Board's order.

33. The Ministry, in their Background Note, furnished to the Committee, stated that in various cases, it can be seen that the demand as appeared in them may not be sustainable on merit in view of observations of CESTATs on merits of the case while passing the say orders in these cases, therefore a decision is taken by the sanctioning authority not to grant sanction for launching of prosecution. Granting sanction for launching of prosecution is a sensitive matter, where the sanctioning authority has to take decision on merits, on the basis of facts of individual case and in terms of prosecution guidelines circulated vide Circular No. 15/90 dated 09.08.1990. when the sanctioning authority is of the view that the proceedings are not likely to sustain as the case of department is not likely to sustain and the same view if affirmed by the Court during appellate proceedings then launching of prosecution in such type of case would be a futile exercise, causing unnecessary litigation and inconvenience to the Department as well as assessee.

34. When enquired about the five cases from the selected Commissionerates i.e. Calicut - 2, Chennai IV - 1 and Cochin - 2, it was observed that the copies of approval by Chief Commissioner to initiate prosecution were not available in the relevant files, the Member, CBEC, during oral evidence, deposed as under:

"Sir, these are the old cases. Sir, I would just like to submit one thing. The very fact that the sanction for prosecution is there on the file and only on that basis the court would have taken it on record. It is quite possible in this situation, in the cases mentioned here, that the original sanction order has gone in the court file and other copies are not available with us in the file. But it cannot be a situation where the court has accepted a prosecution proposal from the Department without getting the approval of the prosecution sanctioning authority. It does not appear plausible."

35. Supplementing the above, CBEC Chairperson stated as under:

"Sir, I can assure you that in future we will review each of these cases."

G. Delay in filing complaint

36. As per para 3 (i) of Board's Circular dated 9 August 1990, a criminal complaint in a Court of Law should be filed only after the sanction of the Chief Commissioner has been obtained for prosecution. Further, para No. 2.8 of the Chapter 17 of the Central Board of Excise and Customs Manual of Supplementary Instructions, 2005 stipulates that once prosecution is sanctioned, the complaint should be filed in Court without any considerable delay. The abstract of delays in filing complaint in Court of Law is given below in the table:

Sl. No.	Delay	No. of prosecution cases
1.	More than three years	20
2.	Between one and three years	47
3.	Less than one year	108

37. Audit observed that there was a need for introduction of a provision to the effect that if a case was not filed within a period to be fixed by the department, sanction would be treated as withdrawn. Such items would also need to be reported in the proposed Management Information System under consideration of the Board. Provision may also be incorporated to the effect that in case the need for filing of complaint was subsequently felt necessary, fresh sanction from CBEC should be obtained. The need for such prescription of timeframe was essential also so as to protect the rights of taxpayers, notwithstanding the fact that they may be offenders. Hence, a suitable time limit may be specified and complied with.

38. The Ministry, in their Background Note, furnished to the Committee, submitted that to gather all the material evidence to establish the mens-rea is a time taking process requiring collecting records/documents from different sources more so when the case is registered by the investigating agencies like DGCEI. While the instructions issued by the Board are adhered to, it is always been the endeavor of the Department to present the case effectively, clearly establishing the aspect of mens-rea so that the case is sustained from the point of prosecution and the accused is punished.

H. Review of prosecution cases

39. As per para 3 (ii) of Board Circular dated 9 August 1990, prosecution once launched should be vigorously followed. The Commissioner of Central Excise in-charge of judicial work should monitor the cases of prosecution at monthly intervals and take corrective action wherever necessary to ensure that the progress of prosecution is satisfactory.

40. During oral evidence, when asked about the details in Para 2.10.1 of the C&AG's Report where a case of the year 1987 involving an amount of ₹ 51,000, the CBEC Member, stated as under:

"The case of M/s Caps & Containers has finally been decided after 25 years and conviction is there in this case. A fine of ₹10,000 has been imposed on each of these accused."

41. When asked about for how many persons the above mentioned was done, the CBEC Chairperson, during oral evidence inter-alia stated that for five persons it was done.

42. Further, during oral evidence, when enquired upon the periodic review of long pending cases, the CBEC Chairperson stated as under:

"Sir, we will issue a circular asking all our officers to review all the cases where appeal has been filed and ask them to file application for withdrawal."

43. CBEC Chairperson, during oral evidence, inter-alia stated that where duty involvement was ₹ 5 lakhs, a threshold of ₹ 10 was prescribed.

44. Further, he stated that:

"Number two, on the larger point of prosecution, prosecution is a deterrent. While I agree with you that long pending prosecution involve huge amount of expenditure. But ultimately, it has a significant effect on others. It is a deterrent only. Realisation of duty is done independent. Prosecution is over and above that."

45. Supplementing the CBEC Chairperson, the Member, CBEC stated as under:

"We are already on the job of collection of data. We have got, unfortunately, report only from seven cases out of 23. Now, we will do it on an urgent basis and see that these cases are withdrawn."

PART II

RECOMMENDATIONS AND OBSERVATIONS

1. The Committee note that prosecution is the commencement of a criminal proceeding, where the Government exhibits before a Court of Law the formal charges against a person accused of an offense and seeks to impose on such person a suitable punishment and penalty. Thus, in Central Excise, prosecution sets in motion a legal process by which Government seeks to ensure punishment of companies and persons concerned with evasion of Central Excise duty. A performance audit was conducted to seek an assurance that the systems and procedures relating to prosecution and penalty were adequate and adhered to by the Central Board of Excise and Customs. The Committee further note that the major findings of this performance audit were Eleven cases from 5 Commissionerates involving meagre amount of ₹ 1.82 lakh which were under prosecution in various Courts for periods exceeding 30 years. Audit could not identify the pendency period in 43 prosecution cases having a revenue implication of ₹ 31.50 crore as the Department was not able to provide details of date of filing of complaint. In 138 prosecution cases in 27 Commissionerates, the sending of investigation reports suffered delays ranging from a month to over 10 years to obtain the mandatory sanction of the Chief Commissioner to launch prosecution. In 61 cases under 12 Commissionerates and in four cases under DGCEI Mumbai Audit could not verify whether the investigation reports were submitted within the stipulated time or not due to non-availability of records in the concerned files. In 175 cases relating to 37 Commissionerates and DGCEI, Delhi there was delay of a month to 15 years in filing complaints with the Courts of Law. Out of 46 selected Commissionerates, 30 Commissionerates reported that they are not doing any review on pending prosecution cases. Instances of delay in Court proceeding due lack of proper attention by the Departmental officers were noticed. In 19 cases where prosecution was initiated, none of the accused persons had been informed separately in writing about the offer of compounding. In 24 Commissionerates no remarks were found in the Director General

(Inspection) reports pertaining to prosecution cases. The Department was not reviewing the prosecution cases for withdrawal as per Board's Circular dated 4 April 1994. The Committee on their examination of the Report No. 29 of 2014 found serious lacunae in administration of Prosecution and Penalties by the CBEC, Department of Revenue, Ministry of finance. The Committee found that prosecution cases involving meagre amounts have been pending for years, delays on part of the Department and non-following of the timelines prescribed in various circulars issued by the Ministry. The Committee in the succeeding paragraphs have made their observations and recommendations on the subject.

2. The Committee note from the Audit observation that there were 593 prosecution cases pending as on 31 March, 2013 involving a money value of ₹2011.56 crore and out of which 155 cases were pending in Surat I and Ahmedabad I Commissionerates and from the reply of the Ministry that as on 31 March 2015 the total pendency of Central Excise prosecution cases is 1292 and Service Tax is 34. The Committee strongly feel that the lack of adequate monitoring on the part of the Department has resulted in increasing pendency. The Committee while noting that pursuant to the Audit observations, a comprehensive circular has been brought out superseding all the circulars issued earlier are of the view that the Department should ensure that circular is implemented in letter and spirit and make all out efforts to expedite/ withdraw the prosecution proceedings by evolving a robust in-built monitoring mechanism whereby review of all pending cases is done periodically to ensure adequacy of action taken by the officers in disposal of the cases alongwith tracking of the expenditure details in carrying out these prosecution proceedings. The Committee are of the view that prosecution registers maintained at various commissionerates be also checked periodically, the cases pending in the courts are pursued actively with the Chief Judicial Magistrate for expediting the hearings, and the cases where on identical allegation a noticee has been exonerated in the quasi-judicial proceedings are withdrawn. The Committee further observe that all these measures would eventually help the Ministry in a better administration of the prosecution and penalties.

3. The Committee note from the Audit observation that 11 cases involving an amount of ₹1.82 lakh has been pending for more than 30 years and in 43 cases pendency periods are not even available. The Committee are shocked to note that two prosecution cases with petty amounts of ₹9000 and ₹750 are pending since 1973 and 1978 respectively. The Committee note from the reply of the Ministry that the prosecution in both these cases were launched in the years 1973 and 1978 before the monetary limit of ₹10000 for launching prosecution was prescribed. The Committee while noting that 288 pending cases are older than 15 years and involve duty of ₹5 lakhs or less with an average of ₹80000/- per case conveyed their unanimous view during evidence cases involving meagre amounts pending for decades is more of a harassment of the officials as well as the defendants. Also, charges of lawyers and TA/ DA claims of the officials often result in expending more than the amounts involved in the prosecution. The Committee appreciate that the Ministry has now decided to recommend filing of application before the court to withdraw from prosecution of the cases where evasion of Central Excise duty is less than ₹5 lakh and is pending for more than 15 years and desire that the limits prescribed vide this circular be reviewed periodically to factor in the inflationary trends. The Committee while acknowledging that the bigger and habitual offenders should not be allowed to get away feel that the Ministry should now ensure that the cases are disposed off timely and such huge pendencies do not recur. The Committee also desire that fast track mechanism for disposal of the pending cases may be evolved preferably by holding lok adalats.

4. The Committee further note that in all cases where the Commissioner of Central Excise in charge of judicial work is satisfied that prosecution should be launched, a proposal/ investigation report for the purpose of launching prosecution should be forwarded to the Chief Commissioner for decision within one month of the adjudication of the case. However, according to Audit, in 138 prosecution cases, the forwarding of investigation reports suffered delays ranging from a month to 10years to obtain mandatory sanction of the Chief

Commissioner to launch prosecution and in 65 cases there was delay upto 4 years from DGCEI units in forwarding the investigation reports. The Committee are shocked to note that a Ministry which is levying penalties on other parties on technical grounds is itself so casual in its working and is excusing itself with the reasoning that the standard of evidence required for prosecution has to be totally different and requires in-depth study and time consuming deliberation and therefore are only of administrative nature. Further, the Committee observe that though the guidelines prescribe that all the applications for compounding of offences must be disposed of within 6 months, there were delays upto 25 months in the disposal of application of compounding. Again, the Ministry stated that the guidelines have only been issued for necessary guidance and advice to the field formations and the said time limit is only advisory in nature. The Committee strongly deprecate the attitude of the Ministry as the audit has only gone by the guidelines made by the Ministry itself which have also been reiterated in the latest circular. The Committee earnestly desire that the Ministry may sensitize its officials about the timelines which are to be followed invariably.

5. The Committee observe that a criminal complaint in a Court of Law should be filed only after the sanction of the Chief Commissioner has been obtained for prosecution and once prosecution is sanctioned, the complaint should be filed in court without any considerable delay. However, Audit found that there were delays upto 15 years in filing complaints with the Courts of law. The Committee note from the reply of the Ministry that the delays were procedural lapses and due to administrative reasons which did not lead to any adverse revenue implications. The Committee while noting the casual response of the Ministry are of the view that the Ministry should prescribe timelines for every stage of filing a complaint with the court and any delays should only be condoned by the highest authority.

6. The Committee also note that Director General (inspection) and Principal Collector, who would be inspecting the offices of Collectors should specially check the points contained in the Circular at the time of conducting inspection,

however, in many cases DG (inspection) failed to make any observations pertaining to the prosecution cases as specified in the circular. The Committee are of the considered opinion that inspections by higher officers are deterrent against the complacent behaviour of the officials. The DG should ensure that reasons for pendency and non-compliance of the guidelines of the Ministry are checked during field inspections and remarks made in writing and timelines be prescribed for action to be taken in this regard.

7. The Committee note that in 61 cases under 12 Commissionates and in four cases under DGCEI Mumbai, Audit could not verify whether the investigation reports were submitted within the stipulated time or not due to non-availability of records. The Committee further note that Audit could not identify the pendency period in 43 prosecution cases as Department was not able to provide details of date of filing of complaint. The Committee also find that in five cases, the copies of approval by Chief Commissioner were not available in the relevant records. The Committee are shocked to note that the papers might have been misplaced/lost from the records when a clear guideline exists that it shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits etc. The Committee direct that the responsibility for lost/ misplaced documents be fixed and appropriate action taken against the officers found responsible in this regard. The Committee also desire that all the all records/files be stored in digitized format, henceforth, so that they are always readily available for verification.

8. The Committee have learnt that 30 out of 46 selected Commissionates reported that they are not doing any review on pending prosecution cases, lack of proper attention by the Departmental officers leading to delay in Court proceedings, not informed the accused separately about the offer of compounding in 19 cases and have not reviewed prosecution cases for withdrawal. The Committee, therefore, deprecate the officers of the Ministry for their lackadaisical approach. The Ministry has been issuing circulars but its own

officials are conveniently ignoring the guidelines and working on their own pace. The Committee strongly desire that the officers who are prompt in disposing their work should be given incentives and those taking unduly long time should be warned and penalised without loss of time.

NEW DELHI;
15 December, 2016
24 Agrahayana, 1938 (Saka)

PROF. K.V. THOMAS
Chairperson,
Public Accounts Committee.

**MINUTES OF THE SECOND SITTING OF SUB-COMMITTEE III
(DIRECT/INDIRECT TAXES) OF PUBLIC ACCOUNTS COMMITTEE (2015-16)
HELD ON 28TH JANUARY, 2016.**

The Sub-Committee sat on Thursday, the 28th January, 2016 from 1500 hrs to 1600 hrs in Committee Room No. 'E', Parliament House Annexe, New Delhi.

PRESENT

Shri Nishikant Dubey - Convenor

Members

LOK SABHA

2. Dr. Kirit Somaiya

RAJYA SABHA

3. Shri Shantaram Naik

LOK SABHA SECRETARIAT

- | | |
|-------------------------|------------------------|
| 1. Shri A.K Singh | - Additional Secretary |
| 2. Smt. Bharti S.Tuteja | - Deputy Secretary |

REPRESENTATIVES OF CENTRAL BOARD OF EXCISE AND CUSTOMS

S. No.	Name	Designation
1.	Shri Najib Shah	- Chairman (CBEC)
2.	Ms Neerja Shah	- Member (CX)
3.	Shri K.K. Sharma	- Member (Service Tax)
4.	Shri S.M. Tata	- Commissioner (ST)
5.	Shri Manish Kumar Sinha	- Commissioner (Central Excise)
6.	Dr. Sanjay Agarwal	- Commissioner (PAC)

**REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR
GENERAL OF INDIA**

- | | |
|-----------------------|-----------------------------|
| 1. Shri Sanjeev Goyal | - Principal Director (C.E.) |
| 2. Ms.M. Hemabindu | - Principal Director (S.T.) |

2. At the outset, the Convenor welcomed the Members and the representatives of the Central Board of Excise and Customs to the second sitting of Sub-Committee III of PAC. The Convenor, then, apprised the Members that the meeting was convened to discuss C&AG Report No.29 of 2014 on 'Administration of Prosecution and Penalties in Central Excise and Service Tax'. He drew the attention of the witnesses to the confidentiality of the matter till a report on the same was presented to the House.

3. The Convenor and members then raised various queries on the above-mentioned subject including legal status of the Circular dated 23rd October, 2015, requirement of enforcing penalties on the paras in the same; status of computerisation of records, absence of copies of sanction orders while initiating prosecution, whether any action was taken against officers for delay in sanction, reasons of delay in pending cases, expediting long pending cases etc.

4. The Convenor while stating that more money was spent on legal fees for fighting cases in the courts than the amount of some offences, desired that a review of all cases where appeal has been filed be done and those cases involving meagre amounts of money be settled to reduce the burden of the courts. The Convenor also desired that the Member, Legal may be present in the next sitting of the Sub-Committee.

5. The Chairman and Member, Excise, Central Board of Excise and Customs replied to the queries raised by the members on related aspects of the subject. As some queries required detailed information and clarifications to be sought from other departments, the Convenor asked the representatives of CBEC to furnish written replies to the Secretariat. The Secretary assured to do the same.

6. The Chairperson thanked the representatives of CBEC for appearing before the Committee and the representatives of the office of the C&AG of India for providing assistance to the Committee in the examination of the subject.

The witnesses then withdrew.

A copy of the verbatim proceedings has been kept on record.

The Committee, then, adjourned

**MINUTES OF THE SEVENTH SITTING OF THE SUB-COMMITTEE-III
(DIRECT AND INDIRECT TAXES) OF PUBLIC ACCOUNTS
COMMITTEE (2016-17) HELD ON 14th DECEMBER, 2016.**

The Sub-Committee sat from 1300 hrs. to 1315 hrs. on 14th December, 2016 in Room No. 51, Parliament House, New Delhi.

PRESENT

Shri Nishikant Dubey - Convenor

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Prof. Richard Hay

RAJYA SABHA

4. Shri Ajay Sancheti

LOK SABHA SECRETARIAT

1. Smt. Bharti S. Tuteja - Deputy Secretary
2. Shri A.K. Yadav - Deputy Secretary

2. At the outset, the Convenor welcomed the Members to the Seventh Sitting of the Sub-Committee-III (Direct and Indirect Taxes). Thereafter, the Sub-Committee took up the draft Report on "***Administration of Prosecution and Penalties in Central Excise and Service Tax***" based on C&AG's Report No. 29 of 2014.

3. The Convenor invited suggestions of the Members on the above mentioned draft Report. After discussing the contents of the draft Report, the Sub-Committee adopted the same with minor changes/modifications.

4. The Sub-Committee authorized the Convenor to finalize the Report in the light of consequential changes arising out of the factual verifications by the Audit and present the same before the Main Committee for consideration and adoption.

The Sub-Committee then adjourned.

**MINUTES OF THE TWENTIETH SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE (2016-17) HELD ON 15th DECEMBER, 2016.**

The Committee sat from 1015 hrs. to 1055 hrs. on 15th December, 2016 in Room No. "51", Parliament House, New Delhi.

PRESENT

Prof. K. V. Thomas - Chairperson

MEMBERS

LOK SABHA

2. Shri Nishikant Dubey
3. Prof. Richard Hay
4. Smt. Riti Pathak
5. Shri Janardan Singh Sighwal
6. Shri Abhishock Singh
7. Dr. Kirit Somaiya
8. Shri Shivkumar C. Udasi

RAJYA SABHA

9. Shri Bhupender Yadav
10. Shri Bhubaneswar Kalita
11. Shri Shantaram Naik
12. Shri Ajay Sancheti

LOK SABHA SECRETARIAT

1. Shri S.C. Chaudhary - Joint Secretary
2. Shri Tirthankar Das - Additional Director
3. Smt. Bharti S. Tuteja - Deputy Secretary

**REPRESENTATIVES FROM THE OFFICE OF THE COMPTROLLER AND
AUDITOR GENERAL OF INDIA**

1. Shri Rakesh Jain - Deputy CAG (RC/LB)
2. Shri Manoj Sahay - Principal Director of Audit (AB)
3. Shri Mukesh P. Singh - DGACE

2. At the outset, the Chairperson, PAC welcomed the Members to the Sitting of the Committee. Thereafter, the Committee took up the following draft Reports for consideration: -

(i) *** *** *** *** ***

(ii) *** *** *** *** ***

(iii) Draft Report on 'Administration of Prosecution and Penalties in Central Excise and Service Tax' based on C&AG Report No. 29 of 2014.

3. The Chairperson invited suggestions of the Members on the above mentioned draft Reports. After discussing the draft Reports, the Committee adopted draft Reports at Sl. No. (ii) and (iii) with minor changes/modifications. *** **

*** *** **

4. The Committee authorized the Chairperson to finalize the adopted Reports in the light of verbal discussion and consequential changes arising out of the suggestions given by the Members and factual verification by the Audit and present the same to Parliament.

5. It was further decided that henceforth the Public Accounts Committee will hold its sitting every Friday in the week.

The Committee then adjourned.

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**CONFIDENTIAL
MOST IMMEDIATE
BY HAND/BY FAX**

F.No.233/01/2016-CX-7
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)

dated 15th March, 2016

OFFICE MEMORANDUM

Subject:- Examination of the subject "Administration of Prosecution and Penalties in Central Excise and Service Tax" based on C&AG Report No.29 of 2014 - regarding

Kindly refer to Lok Sabha Secretariat (PAC Branch) OM No.27/16/2015/PAC dated 3rd February, 2016 forwarding copy of the minutes of the Oral Evidence held on 28th January, 2016 with PAC. In this regard, Ministry vide its O.M. of even No. dated 17th February, 2016 had furnished comments on the instructions/observations made by the PAC members in the minutes.

2. Ministry vide its Circular No.1018/6/2016-CX issued from F.No.96/54/2014-CX.1 dated 29th February, 2016 (copy enclosed) has issued instructions to the field formations for withdrawal from prosecution in Central Excise cases older than 15 years involving duty less than Rs.5 lakhs.

Encl.: as above

15/3/2016

(Sanjay Agarwal)
Commissioner (PAC)
Fax No. 26161208

✓ Ms. Bharti Tuteja,
Deputy Secretary (PAC),
Lok Sabha Secretariat,
Parliament House Annexe,
New Delhi-110 001

Copy to:- Shri Sanjeev Goyal, Principal Director (Service Tax),
Office of the C&AG of India, Bahadur Shah Zafar Marg,
New Delhi - for information please.

Circular No. 1018/6/2016-CX

F. No. 96/54/2014-CX.1
Government of India
Ministry of Finance
Department of Revenue.
Central Board of Excise & Customs

New Delhi, dated the 29th February, 2016

To,

Principal Chief Commissioners/Chief Commissioners of Central Excise (All),

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

Principal Commissioner of Central Excise, Service Tax (All),

Web-master, CBEC

Sir/Madam,

**Subject: - Withdrawal from prosecution in Central Excise cases older than
15 years involving duty less than rupees five lakhs. - reg.**

CAG submitted its report regarding administration of prosecution and penalty in Central Excise and Service Tax wherein regarding withdrawal of old cases of prosecution, it noted that "though the discretion to allow withdrawal of prosecution ultimately rests with the Court, it is the department's responsibility to ensure periodic monitoring of the status of long pending cases as to ensure that cases which in the opinion of the department merit withdrawal are being brought to the notice of the Court

- 24 -

alongwith all supporting facts at the proper time in terms of Sections 257 and 321 of CrPC 1973."

2. The issue has been examined. The present limit for arrest and prosecution in Central Excise cases is Rupees one crore which was made effective vide Circular No. 1010/17/2015-CX dated 23.10.2015. Earlier, the limit for launching prosecution was Rs.25 Lakhs, which came into effect vide letter F.No. 208/31/97-CX6 dated 04.04.1994. Taking into consideration this increase in the limit for prosecution over a period of time, expenditure involved in continuing with old prosecution and equivalent value of the present threshold limit of rupees one crore in the past, it was decided to collect information on prosecution pending in courts for more than fifteen years where the duty involved is less than rupees five lakhs. On the basis of the reports received, it was found that there are 288 cases older than fifteen years, involving duty of rupees five lakh or less. In these 288 cases, the total amount of duty evasion involved was found to be Rs.2.31 crore, which comes to an average of Rs. 80,000/- per case.

3. Provisions relating to withdrawal of prosecution are contained in Section 257 and Section 321 of the CrPC. Further, in the case of Shoo Nandan Paswan Vs. State of Bihar and Others, (1983) 1 SCC 438, Hon'ble Supreme Court noted, while examining the scope of Section 321, four grounds for seeking withdrawal from prosecution. Out of these four grounds, two relevant grounds for Central Excise are as under:-

- (i) Inexpediency of the prosecution for reasons of State and Public Policy, and
- (ii) Adverse effects that the continuance of the prosecution will bring to the public interest in the light of the changed situation.

4.5 Withdrawal of such cases would send a positive message to the manufacturing sector in which policy of "Make in India" is being actively pursued.

5. After due consideration, it has been decided with the approval of the competent authority to recommend filing of application before the Hon'ble Court to withdraw from prosecution of the cases where evasion of Central Excise duty is less than Rupees five lakhs and prosecution is pending for more than fifteen years. Chief Commissioner shall give direction to the Central Excise Officer in the concerned Commissionerate to request the Public Prosecutor to file an application requesting the Court to allow withdrawal from prosecution in accordance with law. It may be noted that on filing of such applications, it is for Hon'ble Courts to finally decide whether or not to pursue the prosecution.

6. Attention is also invited to the circular no. 1010/17/2015-CX dated 23.10.2015 on withdrawal from prosecution where quasi-judicial proceedings on identical facts have failed. Appropriate action as per this Circular may be taken where necessary.

7. Application should also be moved for withdrawal from prosecution against the co-noticees in a case, where the prosecution, against the main noticee is proposed to be withdrawn, as the grounds for withdrawal of prosecution would apply equally to the co-noticees.

8. On examination of specific cases, if there are more grounds available for discontinuation of prosecution proceedings, the same may be incorporated in the application before writing to the Public Prosecutor to file the application. On the other hand, if there are valid grounds available for continuation of the prosecutions

proceedings, the same should be examined by the Chief Commissioner and where it is proposed to continue with prosecution, it should be brought to the notice of the Central Excise wing in the Board with necessary justification.

9. This shall come into force from 1st of March, 2016. Difficulty, if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version will follow.

(Santosh Kumar Mishra)
Under Secretary to the Government of India

Circular No. 1009/16/2015-CX

F. No. 96/54/2014-CX.1

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs

New Delhi, dated the 23rd October, 2015

To

Principal Chief Commissioner/ Chief Commissioner of Central Excise (All),

Principal Chief Commissioner/ Chief Commissioner of Central Excise and Service Tax (All),

Madam/ Sir,

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

I am directed to refer to following circulars/instructions issued by the Board regarding guidelines for launching of prosecution under the Central Excise Act, 1944 and the Finance Act, 1994:

1. Circular No. 15/90-CX.6 dated 09.08.1990 issued from F. No. 218/7/89-CX.6.
2. Circular No. 30/30/94-CX dated 04.04.1994 issued from F. No. 208/20/93/CX.6.
3. Letter F. No. 208/31/97-CX.6 dated 04.04.1994 regarding enhancement of monetary limit.
4. Circular No. 35/35/94-CX dated 29.04.1994 issued from F. No. 208/22/93-CX.6.
5. Letter F. No. 203/05/98-CX.6 dated 06.04.1998 regarding making DG, CEI competent authority to sanction prosecution in respect of cases investigated by DGCEI.
6. Letter F. No. 208/05/98-CX.6 dated 20.10.1998.
7. Letter F. No. 208/21/2007-CX.6 dated 15.06.2007.
8. Circular no 140/9/2011-Service Tax dated 12-5-2011.

2. In supersession of these instructions and circulars, following consolidated guidelines are hereby issued for launching prosecution under the Central Excise Act, 1944 and the Finance Act, 1994.

3. Person liable to be prosecuted

3.1 Whoever commits any of the offences specified under sub-section (1) of Section 9 of the Central Excise Act, 1944 or sub-section (1) of section 89 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.

4. 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 sub-section (1) of Section 9 of the Central Excise Act, 1944 or sub-section (1) of section 89 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 three 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 five 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 assessee 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.

6. Procedure for sanction of prosecution

6.1 Prosecution proposal should be forwarded to the Chief Commissioner / Principal Chief Commissioner or Director General / Principal Director General of DGCEI (in respect of cases booked by DGCEI) after the case has been carefully examined by the Commissioner/Principal Commissioner or Additional Director General /Principal Additional Director General of DGCEI who has adjudicated the case. In all cases of arrest, examination of the case to ascertain fitness for prosecution shall be necessarily carried out.

6.2 Prosecution should not be launched in cases of technical nature, or where the additional claim of duty/tax is based totally on a difference of opinion regarding interpretation of law. Before launching any prosecution, it is necessary that the department should have evidence to prove that the person, company or individual had guilty knowledge of the offence, or had fraudulent intention to commit the offence, or in any manner possessed mens rea (guilty mind) which would indicate his guilt. It follows, therefore, that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but it should be restricted to only against persons who were in charge of day-to-day operations of the factory and have taken active part in committing the duty/tax evasion or had connived at it.

6.3 Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings particularly in cases of technical nature or where interpretation of law is involved. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher as the case has to be established beyond reasonable doubt whereas the adjudication proceedings are decided on the basis of preponderance of probability. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the test of being beyond reasonable doubt for recommending prosecution. Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty/tax evaded or Cenvat credit wrongly availed and the nature as well as quality of evidence collected.

6.4 Decision on prosecution should be normally taken immediately on completion of the adjudication proceedings. However, Hon ble Supreme Court of India in the case of Radheshyam Kojriwal [2011(266)ELT 294 (SC)] has *interalia*, observed the following :-

(i) adjudication proceedings and criminal proceedings can be launched simultaneously; (ii) decision in adjudication proceedings is not necessary before initiating criminal prosecution; (iii) adjudication proceedings and criminal proceedings are independent in nature to each other and (iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution. Therefore, prosecution may even be launched before the adjudication of the case, especially where offence involved is grave, qualitative evidences are available and it is also apprehended that party may delay completion of adjudication proceedings.

6.5 Principal Commissioner/Commissioner or ADG (Adjudication) acting as adjudicating authority should indicate at the time of passing the adjudication order itself whether he considers the case to be fit for prosecution so that it can be further processed and sent to Principal Chief Commissioner/ Chief Commissioner or Principal Director General/ Director General of DGCEI, as the case may be, for sanction of prosecution. Where at the time of adjudication proceedings no view has been taken on prosecution by the Adjudicating Authority then the adjudication wing shall re-submit the file within 15 days from the date of issue of adjudication order to the Adjudicating Authority to take view of prosecution. Where, prosecution is proposed before the adjudication of the case, Commissioner/Principal Commissioner or Principal Additional Director General/Additional Director General, DGCEI who supervised the investigation shall record the reason for the same and forward the proposal to the sanctioning authority. The adjudicating authority shall also be informed of the decision to forward the proposal so that there is no need for him to examine the case at the time of passing of adjudication order from the perspective of prosecution. Principal Chief Commissioner/ Chief Commissioner or Principal Director General/ Director General of DGCEI may on his own motion also, taking into consideration the seriousness of an offence, examine whether the case is fit for sanction of prosecution irrespective of whether the adjudicating authority has recommended prosecution.

6.6 In respect of cases investigated by DGCEI, the adjudicating authority would intimate the decision taken regarding fitness of the case for prosecution to the Principal Additional Director General/ Additional Director General of the Zonal Unit or Headquarters concerned, where the case was investigated and show cause notice issued. The officers of unit of Directorate General of Central Excise Intelligence concerned would prepare an investigation report for the purpose of launching prosecution, within one month of the date of receipt of the decision of the adjudicating authority and would send the same to the Director General, CEI for taking decision on sanction of prosecution. The format of investigation report is annexed as Annexure-I to this Circular.

6.7 In respect of cases not investigated by DGCEI, where the Principal Commissioner/Commissioner who has adjudicated the case is satisfied that prosecution should be launched, an investigation report for the purpose of launching prosecution should be carefully prepared within one month of the date of issuance of the adjudication order. Investigation report should be signed by an Assistant/Deputy Commissioner, endorsed by the jurisdictional Principle Commissioner/Commissioner and sent to the Principal Chief/ Chief Commissioner for taking a decision on sanction for launching prosecution. The format of investigation report is annexed as Annexure-I to this circular. A criminal complaint in a court of law should be, filed by the jurisdictional Commissionerate only after the sanction of the Principal Chief / Chief Commissioner or Principal Director General/Director General of DGCEI has been obtained.

6.8 Principal Commissioner/Commissioner or Additional Director General (Adjudication) shall submit a report by 10th of every month to the Principal Chief /Chief Commissioner or the Principal Director General/ Director General of CEI, who is the sanctioning authority for prosecution, conveying whether a view on launching prosecution has been taken in respect of adjudication orders issued during the preceding month.

6.9 Once the sanction for prosecution has been obtained, criminal complaint in the court of law should be filed as early as possible by an officer of the jurisdictional Commissionerate authorized by the Commissioner.

6.10 It has been reported that delays in the Court proceedings are often due to non-availability of the records required to be produced before the Magistrate or due to delay in drafting of the complaint, listing of the exhibits etc. It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody. Where a complaint has not been filed even after a lapse of three months from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of the Principal Chief/ Chief Commissioner or the Principal Director General or Director General of DGCEI by the Principal Commissioner/ Commissioner in charge of the Commissionerate responsible for filing of the complaint.

7. Monitoring of Prosecution

7.1 Prosecution, once launched, should be vigorously followed. The Principal Commissioner/Commissioner of Central Excise/Service Tax should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory. In DGCEI, an Additional/ Joint Director in each zonal unit and DGCEI (Hqrs) shall supervise the prosecution related work. For keeping a track of prosecution cases, a prosecution register in the format enclosed as Annexure-II to this Circular should be maintained in the Prosecution Cell of

each Commissionerate. The register shall be updated regularly and inspected by the Principal Commissioner/Commissioner at least once in every quarter of a financial year.

7.2 For keeping a track of prosecution cases, a prosecution register in the format enclosed as Annexure-III to this Circular should be maintained in the Zonal Units of DGCEI and DGCEI (Hqrs.) pertaining to cases investigated by them.

8. Appeal against Court order in case of inadequate punishment/acquittal:

8.1 Principal Commissioner/Commissioner responsible for the conduct of prosecution or Principal Additional Director General or Additional Director General of DGCEI (in respect of cases booked by DGCEI), should study the judgement of the Court and, where it appears that the accused person have been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, appeal should be considered against the order. Sanction for appeal in such cases shall be accorded by Principal Chief/ Chief Commissioner or Principal Director General/ Director General of DGCEI.

9. Publication of names of persons convicted:

9.1 Section 9B of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act, 1994 grants power to publish name, place of business etc. of the person convicted under the Act by a Court of Law. The power is being exercised very sparingly by the Courts. It is directed that in deserving cases, the department should make a prayer to the Court to invoke this section in respect of all persons who are convicted under the Act.

10. Procedure for withdrawal of Prosecution:

10.1 Procedure for withdrawal of sanction-order of prosecution

10.1.1 In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidences have come to light necessitating review of the sanction for prosecution, the Commissionerate or the DGCEI unit concerned should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidences, the sanctioning authority namely Principal Chief/ Chief Commissioner or Principal Director General or Director General of DGCEI, if satisfied, may recommend to the Board (Member of the policy wing concerned) that the sanction for prosecution be withdrawn.

10.2 Procedure for withdrawal of Complaint already filed for prosecution

10.2.1 In cases where the complaint has already been filed complaint may be withdrawn

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as per Circular No. 998/5/2015-CX dated 28.02.2015 which provides that where on identical allegation a noticee has been exonerated in the quasi-judicial proceedings and such order has attained finality, Principal Chief Commissioner/ Chief Commissioner or the Principal Director General/ Director General of DGCEI shall give direction to the concerned Commissionerate to file an application through Public Prosecutor requesting the Court to allow withdrawal of the Prosecution in accordance with law.

11. Transitional Provisions

11.1 All cases where sanction for prosecution is accorded after the issue of this circular shall be dealt in accordance with the provisions of this circular irrespective of the date of the offence. Cases where prosecution has been sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority in light of the provisions of this circular.

12. Compounding of offences

12.1 Section 9A(2) of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act, 1994 provides for compounding of offences by the Principal Chief/ Chief Commissioner on payment of compounding amount. Circular no. 54/2005-Cus dt 30-12-2005 and Circular no 862/20/2007-CX-8 dated 27-12-2007 on the subject of compounding of offences may be referred in this regard which inter alia provides that all persons against whom prosecution is initiated or contemplated should be informed in writing, the offer of compounding.

13. Inspection of prosecution work by the Directorate of Performance Management:

13.1 Director General, Directorate of Performance Management and Chief Commissioners, who are required to inspect the Commissionerates, should specifically check whether instruction contained in this Circular are being followed scrupulously and to ensure that reasons for pendency and non-compliance of pending prosecution cases are looked into during field inspections apart from recording of statistical data.

14. The field formations may suitably be informed. Receipt of this Circular may please be acknowledged. Hindi version will follow.

Yours faithfully,

(ROHAN)

Under Secretary to the Govt. of India

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Annexure-I

F. No.

INVESTIGATION REPORT FOR THE PURPOSE OF LAUNCHING PROSECUTION
AGAINST

COMMISSIONERATE

DIVISION

1. Name & address of the person(s) (including legal person(s):
2. Central Excise/Service Tax Registration No. (If any):
3. Nature of offence including commodity:
4. Charges:
5. Period of offence:
6. Amount of evasion involved
7. Particular of persons proposed to be prosecuted :
 - a. Name:
 - b. Father's Name:
 - c. Age : Sex:
 - d. Address:
 - e. Occupation:
 - f. Position held in the Company/Firm:
 - g. Role played in the offence :
 - h. Material evidence available against the accused (please indicate separately documentary and oral evidence).
 - i. Action ordered against the accused in adjudication.
8. Brief note why prosecution is recommended :

(Deputy/Assistant Commissioner or Deputy/ Assistant Director, DGCEI)

Place

Date

9. I have carefully examined the Investigation Report and find it in order for filing criminal complaint under Section 9 and 9AA of the Central Excise Act, 1944.

(Commissioner, Central Excise _____)/

(Additional Director General, DGCEI-----)

Place

Date

1. The proposal should be made in the above form in conformity with the guidelines issued by the Ministry. With regard to column 4 above, all the charging sections in the Central Excise Act/Service Tax and other allied Acts should be mentioned. With regard to column 7, information should be filled separately for each person sought to be prosecuted.

2. A copy of the Show Cause Notice as well as the Order of Adjudication (Wherever adjudication has been issued) should be enclosed with this report.
3. If any appeal has been filed, then this fact should be specifically stated.

FORMAT OF PROSECUTION REGISTER

Sl. No.	Case investigated by	Division/Range	File no.	Criminal complaint no.	Date of detection	Name of assessee and address	Registration no.	Nature of offence
1	2	3	4	5	6	7	8	9
10	Amount of tax/duty confirmed	Period of evasion	Name of accused person (s)	Date of sanction of prosecution	Date of sanction of compounding offer	Date of filing of complaint		
11	11	12	13	14	15			
16	Name, address and phone no of the counsel	Date of judgement	Appeal status- date/ court in which filed	Date of hearing	Remarks/sign with name and date (Officer filing the information)			
17	17	18	19	20				

ANNEXURE-III

FORMAT OF PROSECUTION REGISTER TO BE MAINTAINED BY DGCEI

Sl.No.	Date of Receipt of O- in-O in DGCEI	Date of submission of investigation report	Date of Receipt of Sanction Order from DG, CEI	Sanction Order No. & Date
1	2	3	4	5
6	Date of filing of Complaint in Court	Criminal Complaint No.	File No. of Commission - -erate	Name of Commiss- -lonerate
7	7	8	9	10