



PROSECUTION UNDER PRE-GST ERA

Before adoption of “one nation one tax one market” ideology i.e. uniform goods and service tax (GST) by virtue of Constitutional (One Hundred and First Amendment) Act, 2016, the erstwhile legislations dealing with prosecution relating to goods and service were provided under Finance Act, 1994 (Service Tax) and Central Excise Act, 1944. The erstwhile legislations are still relevant as per Section 174 of the Central Goods and Services Act, 2017 wherein pending operations, investigation or prosecution shall continue under the relevant laws.

UNDER CENTRAL EXCISE ACT, 1944

Section 9A(1A) of Central Excise Act, 1944 provided that non-payment of duty exceeding Rs. 50 lakhs and punishable under Section 9(1)(b) or 9(1)(bbbb), is a cognizable offence. The rest of offences as stated in Section 9 are non-cognizable and bailable offences¹.

- **Attempt to Commit or Abetment²** – In case of attempt to commit or abet the commission of an offence listed in Section 9(1)(a) or 9(1)(b), shall be imprisoned for a term of 7 years along with fine. However, in exceptional circumstance, the court after recording special reasons may imprison the person for a term not less than 6 months.³
- **Repeated Offender** – Section 9(2) of Central Excise Act, 1944 prescribes punishment for repeated offenders, an imprisonment for a term upto 7 years.

¹ Section 9A(1) of the Central Excise Act, 1944.

² Act of encouraging, inciting or aiding another and define under Section 107 of Indian Penal Code, 1860.

³ Section 9(1)(d) of Central Excise Act, 1944.



- **Compounding of Offences** – Under Section 9A(2) of the Act, the rules namely Central Excise (Compounding Of Offences) Rules, 2005 was notified⁴. Under Rule 3, an application may be submitted to the appropriate Compounding Authority⁵, who shall examine the application in the light of the report from the reporting authority⁶ and thereafter may either allow the application in terms of Rule 5 (fixation of the compounding amount) read with Rule 6 (granting immunity from prosecution) or reject the application.⁷

The provision will not be applicable to persons, who have once availed the benefits for offences mentioned under clause (a), (b), (bb), (bbb), (bbbb) or (c) of section 9(1) or the person has been accused of committing an offence under Narcotics Drugs and Psychotropic Substance Act, 1985 (NDPS) or has been convicted by the court under the Central Excise Act, 1944 on or after 30.12.2005.

- **Pre-Prosecution Sanction** – The approval from the appropriate officers as per the circular⁸ is necessary for initiation of the prosecution, who shall examine the prosecution proposal based on the evidence as the standard of proof in prosecution is beyond reasonable doubt unlike in adjudication proceeding.

UNDER FINANCE ACT, 1994 (SERVICE TAX)

Section 89(1)(i) of the Finance Act, 1994, lists the nature of offences wherein the amount exceeds Rs. 2 crore, is punishable with

⁴ M.F. (D.R.) Notification No. 37/2005-C.E. (N.T.), dated 30.12.2005

⁵ Defined under Rule 2(c), Central Excise (Compounding Of Offences) Rules, 2005.

⁶ Defined under Rule 2(e), Central Excise (Compounding Of Offences) Rules, 2005.

⁷ Rule 4, Central Excise (Compounding Of Offences) Rules, 2005.

⁸ Central Board of Excise & Customs, Dept. of Revenue, Ministry of Finance, Government of India, F.No. 96/54/2014-CX-1, Circular No. 1009/16/2015-CX dated 23.10.2015.



imprisonment for a maximum period of 3 years and not less than 6 months. Section 89(1)(ii) provided that the person has collected any amount as service tax but has failed to pay the amount to the government within 6 months from the due date of such payment, and the amount exceeds Rs. 2 crore, such offence is punishable with imprisonment for a maximum period of 7 years and not less than 6 months. Section 89(1)(iii) provides that in any other offence, the imprisonment may extend upto 1 year.

Offences punishable under Section 89(1)(ii) are termed as cognizable under Section 90, rest are non-cognizable. Section 91 of the Act provides that the accused may be arrested, if the competent authorities as defined in the Finance Act, 1994 (Service Tax), has reasons to believe.

- **Repeated Offender** – Section 89(2) of the Act provides that a convicted offender again punishable with offences as per Section 89(1)(i) or 89(1)(ii) shall be punished for the subsequent offence with imprisonment for a term not less than 3 years and for offences as per Section 89(1)(iii) shall be punished for the subsequent offence with imprisonment for a term not less than 7 years.
- **Compounding of Offences** – In service tax, compounding was introduced vide Service Tax (Compounding of Offences) Rules, 2012⁹. The procedure prescribed hereunder is similar to compounding under the Central Excise Act¹⁰, wherein the

⁹ Notification No. 17/2012-ST [F.No. 334/1/2012-ST], dated 29.05.2012.

¹⁰ Section 9A of the Central Excise Act read with Central Excise (Compounding Of Offences) Rules, 2005.



application is submitted under Rule 4, either before or after the initiation of prosecution to the Competent Authority¹¹ who shall examine the application on the basis of the report of the reporting authority¹². Thereafter the Competent Authority may either accept and grant immunity by fixing the compounding amount¹³ or reject the application.

- **Pre-Prosecution Sanction** – Section 89(4) provides that the prosecution against any person need prior approval from the Principal Chief Commission of Central Excise and Chief Commissioner of Central Excise for initiation of the prosecution proceedings, wherein the official shall examine the prosecution proposal.

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¹¹ Defined under Rule 2(c), Service Tax (Compounding Of Offences) Rules, 2012.

¹² Defined under Rule 2(e), Service Tax (Compounding Of Offences) Rules, 2012.

¹³ Rule 5 read with Rule 6, Service Tax (Compounding Of Offences) Rules, 2012.

¹⁴ The aim of the present article is to provide insights regarding prosecution and proceedings thereunder, under the pre-GST tax era. The opinions presented in the article are personal in nature and not to be deemed as legal advice.