

## **Chapter 1 : Introduction**

### **1.1 Introduction**

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.

#### **1.1.1 Prosecution**

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.

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.

#### **1.1.2 Penalty**

The Central Excise Act and the Finance Act provide for penalties and punishments for their violation. Penalties covered under the performance audit encompass the criminal punishment of imprisonment and fine which can be granted only by a Criminal Court, after prosecution.

### **1.2 Organisational set up**

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. It deals with the tasks of formulation of policy concerning levy and collection of Customs, Central Excise duties and Service Tax, prevention of smuggling and administration of matters relating to Customs, Central Excise, Service Tax and Narcotics. The Board is the administrative authority for its subordinate organisations, including Custom Houses, Central Excise and Service Tax Commissionerates and the Central Revenues Control Laboratory. Member (Central Excise) and

Member (Service Tax) in the CBEC have the overall charge of the prosecution relating to the respective levies. They are assisted by Chief Commissioners/Commissioners.

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. The Directorate General is headed by a Director General and is assisted by six zonal units at Delhi, Mumbai, Ahmedabad, Bengaluru, Chennai and Kolkata.

Chart 1.1 : Organogram

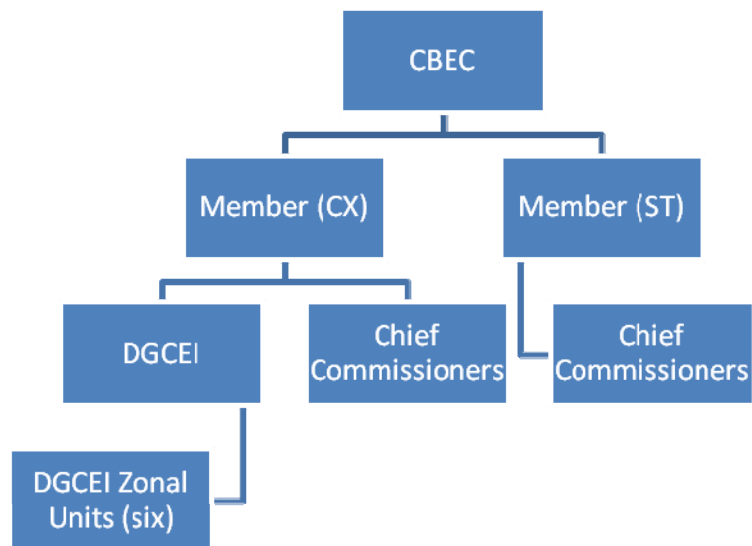
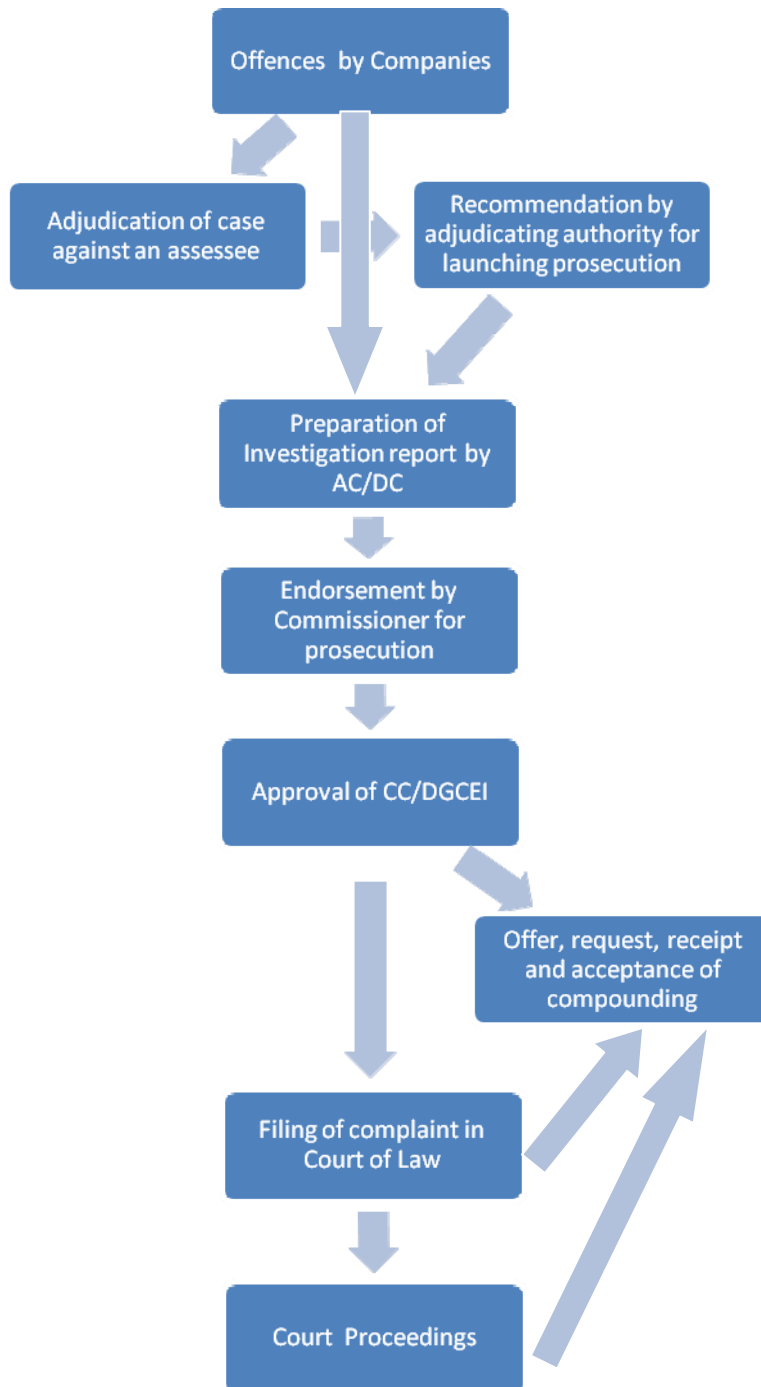


Chart 1.2 : Initiation of prosecution



### 1.3 Why we chose this topic

As prosecution and penalty are important deterrent mechanisms, we intended to examine the administration and implementation of prosecution and penalty machinery, by CBEC and its field formations for combating tax evasion. We sought to achieve this by examining current structures, its utilisation and effectiveness.

## 1.4 Audit objectives

To check whether

- The tool of prosecution has been used in deserving cases.
- Functional efficiency was ensured at various levels within the department in prosecution cases.
- The manpower, time and resources of the Department were utilised efficiently as envisaged by the Board with regard to prosecution and penalty proceedings.

## 1.5 Scope and methodology of audit

This performance study examines whether the CBEC and its formations were able to use the provisions of prosecution and penalty appropriately and judiciously to serve as an effective deterrence measure against tax evasion. We examined the prosecution cases made available by 46<sup>1</sup> Commissionerates out of the 104 Commissionerates and the records at the DGCEI zonal units.

To examine how well and swift the department acted in ensuring deterrence using the prosecution tool, we examined the adequacy of the administrative procedures and its effective implementation by the authorities concerned. Test checked 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.

## 1.6 Legal Provisions

### 1.6.1 Punishable offences under the Central Excise Act, 1944

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

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<sup>1</sup>Ahmedabad I, Bengaluru II, Bengaluru ST, Bhopal, Bhubaneswar I, Bhubaneswar II, Bolpur, Calicut, Chandigarh I, Chennai II, Chennai IV, Cochin, Delhi I, Delhi III (Gurgaon), Delhi ST, Ghaziabad, Guwahati, Hyderabad I, Hyderabad II, Indore, Jaipur I, Jaipur II, Jamshedpur, Kolhapur, Kolkata I, Kolkata II, Kolkata III, Kolkata ST, Kolkata V, Lucknow, Ludhiana, Mangalore, Meerut II, Mumbai I ST, Mumbai III, Patna, Pondicherry, Raigad, Raipur, Rajkot, Ranchi, Surat I, Surat II, Thane II, Tirunelveli and Trivandrum

- 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;
  - 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.

### **1.6.2 Punishable offences under the Finance Act, 1994**

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;
- d) collecting an amount as service tax but failure to deposit it for a period of more than six months.

### **1.6.3 Offences by a company/firm**

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.

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.

#### **1.6.4 Cognizance of an offence**

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.

#### **1.6.5 Compounding of offences**

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.

#### **1.6.6 When offences cannot be compounded**

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.

### **1.7 Acknowledgement**

We acknowledge the co-operation extended by the CBEC, Department of Revenue and its subordinate formations in providing necessary records during the conduct of this audit. We discussed the audit objectives and scope of the performance audit with the CBEC in an Entry Conference on 12 December 2013. We conducted the Exit Conference with CBEC on 14 August 2014.