

Circular No.27/2015-Customs

F.No.394/68/2013-Cus (AS)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Anti-Smuggling Unit)

New Delhi, the 23rd October, 2015

To

All Chief Commissioners of Customs,
All Chief Commissioners of Customs (Preventive),
All Chief Commissioners of Customs, Central Excise and Service Tax,
All Chief Commissioners of Central Excise and Service Tax,
All Chief Commissioners of Service Tax,
Chief Commissioner (AR), CESTAT,
All Directors General,
Webmaster, CEEC.

Sir/Madam,

Subject – Guidelines for launching of prosecution in relation to offences punishable under Customs Act, 1962- reg.

Attention of the field formations is invited to the existing prosecution guidelines issued by the Ministry vide order No.394/71/97-CUS (AS) dated 22.06.1999 revising the guidelines issued vide order No.711/16/84-CUS (AS) dated 21st May, 1990 and 20th February, 1992.

2. Since then, several significant changes have been effected in the Customs Act and other relevant enactments. Amendments and changes were made in section 135 of Customs Act, 1962 vide Finance Act, 2007 and Finance Act, 2013 relating to threshold limit/categorization of offences. Moreover, section 137 of Customs Act, 1962, has been amended and provisions of compounding of offences had been incorporated through Finance Act, 2004 and Finance Act, 2009. Amendments were made in section 104 of the Customs Act, 1962 through Finance Act, 2012 and Finance Act, 2013 wherein certain offences were made cognizable and non-bailable and certain other offences were kept as non-cognizable and bailable. Revised guidelines for arrest and bail were accordingly issued by the Ministry vide order No.394/68/2013-Cus (AS) dated 17th September, 2013.

3. Keeping in view the above changes, the following revised guidelines for prosecution in relation to offences punishable under Customs Act, 1962 are issued in supersession of the earlier guidelines on launching prosecution issued vide Ministry's letter No. 394/71/97-Cus (AS), dated the 22nd June, 1999.

4. Guidelines for Prosecution:

4.1. Person liable to be prosecuted: As per the provisions of the Customs Act, 1962, prosecution may be launched against any person including legal person in respect of the offences covered under any of the sections namely 132,133,134, 135,135A or 136 of the Customs Act, 1962.

4.1.1. The decision for launching prosecution should be taken in cases which fulfil the requirement of the provisions of any of the sections 132,133,134, 135,135A or 136 of the Customs Act, 1962 after a careful consideration of the nature of offence, the role of the person concerned and evidence available to substantiate the guilty knowledge/mensrea.

4.2. Threshold limit for launching prosecution and exceptions:

4.2.1. Prosecution may be considered in the following categories of cases:

4.2.1.1. Baggage and Outright smuggling cases:

(i) Cases involving unauthorized importation in baggage / cases under Transfer of Residence Rules, where the CIF value of the goods involved is Rs. 20, 00,000/- (Rupees twenty lakh) or more;

(ii) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 of the Customs Act, 1962 or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods is Rs.20,00,000 (Rupees twenty lakh) or more;

4.2.1.2. Appraising Cases/ Commercial Frauds:

(i) In cases related to importation of trade goods (i.e. appraising cases) involving-

(a) wilful mis-declaration in value/description;

(b) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962,

where CIF value of the offending goods is Rs. 1,00, 00,000 (Rupees one crore) or more;

(ii) In cases related to fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act 1962, if the amount of drawback or exemption from duty is Rs. 1,00, 00,000 (Rupees one crore) or more;

(iii) In cases related to exportation of trade goods (i.e. appraising cases) involving,-

(a) wilful mis-declaration in value / description ;

(b) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962

4.5. It is clarified that prosecution in respect of narcotic drugs and psychotropic substances may be launched as per the provisions of the NDPS Act, 1985.

4.6. Except in respect of cases covered by sub paras 4.2.1.2 and 4.2.2 above, in all other cases, prosecution may be launched after due sanction by the Commissioner /Principal Commissioner (Pr. Commr.) or Additional Director General (ADGRI) / Principal Additional Director General of Revenue Intelligence (Pr. ADGRI), as the case may be. Prior approval of the Chief Commissioner / Principal Chief Commissioner (Principal CC) or Director General / Principal Director General of Revenue Intelligence (Pr. DGRI), as the case may be, will be essential for launching of prosecution in respect of cases covered under sub paras 4.2.1.2 and 4.2.2 above.

5. The following aspects may also be kept in view while considering launching of prosecution for offences under the Customs Act, 1962:-

5.1. Prosecutions should not be launched as a matter of routine and/or in cases of technical nature, where the additional claim for duty is based solely on a difference of interpretation of the law. Before launching any prosecution, it is essential that the department should have sufficient evidence to prove that the person, individual or company, against whom prosecution is being considered, had guilty knowledge of the offence or had fraudulent intention of committing the offence, or in any manner possessed mens-rea 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 should be restricted to only such persons who have taken active part in committing, or have connived at, the offence relating to either of smuggling or of customs duty evasion or of mis-declaration of value, quantity etc. For this purpose, the Commissioner /Pr. Commr. or ADGRI / Pr. ADGRI should go through the relevant case file thoroughly and ascertain for themselves that the definite involvement of different partners/directors/executives/officials, against whom reasonable evidence about their involvement in the offence exists and should be proceeded against, while launching the prosecution.

6. **Stage for launching of prosecution**: Normally, prosecution may be launched immediately on completion of adjudication proceedings. However, prosecution in respect of cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna may preferably be launched immediately after issuance of show cause notice.

6.1. Further, in following cases investigation may be completed in time bound manner preferably within **six months** and adjudication may be expedited to facilitate launching of prosecution. These cases are:

- (a) In case where arrest has been made during investigation (for commercial fraud cases as well as outright smuggling cases) or in the case of a habitual offender.
- (b) In case where arrest has not been made but it relates to outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of goods is Rs. 20, 00,000 (Rupees twenty lakh) or more.

6.2. In a recent judgement passed by Hon'ble Supreme Court of India in the case of Radhe Shyam Kejriwal [2011(266)ELT 294 (SC)], the Apex court had, inter alia, observed that (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 of each other in nature and (iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution. In view of aforesaid observations of Hon'ble Supreme Court, it is reiterated that if the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available.

6.3. Prosecution need not be kept in abeyance on the ground that the party has gone in appeal/revision. However, in order to ensure that the proceeding in appeal/revision are not unduly delayed because the case record are required for purpose of prosecution, a parallel file containing copies of the essential documents relating to adjudication should be maintained.

6.4. The Superintendent in charge of adjudication section should endorse copy of all adjudication orders to the prosecution section. The Superintendent in charge of prosecution section should monitor receipt of all serially numbered adjudication orders and obtain copies of adjudication orders of missing serial numbers from the adjudication section every month.

7. Procedure for launching prosecution:

7.1. In all such cases, where prior approval of Chief Commissioner/Principal CC or DGRI / Pr. DGRI is necessary for launching prosecution, an investigation report for the purpose of launching prosecution (as per Annexure- I), should be carefully prepared and signed by the Assistant Commissioner / Assistant Director concerned. The investigation report, after careful scrutiny (for incorporation of all relevant facts) should be endorsed by the Commissioner/ Pr. Commr. or ADGRI/ Pr. ADGRI. The Chief Commissioner/Principal CC or DGRI / Pr. DGRI should ensure that a decision about launching of prosecution or otherwise, is taken after careful

prosecution register for proper record and monitoring. Similar record may be kept in respect of appeal against court order and / or withdrawal of prosecution as detailed in para 10 to 12 above.

13.4. The field formations should upload/update the information regarding prosecution initiated in the Management Information System (MIS) under prescribed Proforma.

14. Inspection of prosecution work:

Director General (Inspection) and Chief Commissioners/Principal CCs, while carrying out inspection of the Commissionerates/Custom Houses, should specially check all the above mentioned points, and make a mention about implementation of the guidelines in their Inspection Reports.

15. Transitional Provisions:

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.

16. Where a case is considered suitable for launching prosecution and where adequate evidence is forthcoming, securing conviction largely depends on the quality of investigation. It is, therefore, necessary for senior officers to take personal interest in investigations of important cases of smuggling/duty evasion and also in respect of cases having money laundering angle and to provide guidance and support to the investigating officers.

17. It has also been noticed that the officers posted for prosecution work do not have proper training. The Director General, National Academy of Customs Excise and Narcotics (NACEN), Faridabad, should therefore, organize separate training courses on prosecution/arrests etc. from time to time and also should incorporate a series of lectures on this issue in the courses organized for anti-smuggling. The Commissioner / Pr. Commr. or ADGRI / Pr. ADGRI should judiciously sponsor officers for such courses.

18. The field formations are hereby directed to circulate these guidelines to all the formations under their charge. Difficulties, if any, in implementation of the aforesaid guidelines may be brought to the notice of the Board.

19. Please acknowledge receipt of this circular.

Yours faithfully,

Enclosure: As above

(A.C.MALLICK)
Under Secretary to the Govt. of India

Amendment of section 47.

manner.”

Amendment of section 49.

62. In section 47 of the Customs Act, in sub-section (2), for the words “five days”, the words “two days” shall be substituted.

63. In section 49 of the Customs Act,—

(a) for the words “be permitted to be stored in a public warehouse”, the words “be permitted to be stored for a period not exceeding thirty days in a public warehouse” shall be substituted; 5

(b) the following proviso shall be inserted, namely:—

Amendment of section 69.

“Provided that the Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time.” 10

64. In section 69 of the Customs Act, in sub-section (1), for clause (a), the following clause shall be substituted, namely:—

Amendment of section 104.

“(a) a shipping bill or a bill of export in the prescribed form or a label or declaration accompanying the goods as referred to in section 82 has been presented in respect of such goods.”

65. In section 104 of the Customs Act, for sub-section (6), the following sub-sections shall be substituted, namely:— 15 2 of 1974.

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under section 135 relating to—

(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or 20

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees,

shall be non-bailable. 25

Amendment of section 129B.

(7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.”

66. In section 129B of the Customs Act, in sub-section (2A), after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that where such appeal is not disposed of within the period specified in the first proviso, the Appellate Tribunal may, on an application made in this behalf by a party and on being satisfied that the delay in disposing of the appeal is not attributable to such party, extend the period of stay to such further period, as it thinks fit, not exceeding one hundred and eighty-five days, and in case the appeal is not so disposed of within the total period of three hundred and sixty-five days from the date of order referred to in the first proviso, the stay order shall, on the expiry of the said period, stand vacated.” 30 35

Amendment of section 129C.

67. In section 129C of the Customs Act, in sub-section (4), for the words “ten lakh rupees”, the words “fifty lakh rupees” shall be substituted.

Amendment of section 135.

68. In section 135 of the Customs Act, in sub-section (1), in clause (i), in sub-clauses (B) and (D), for the words “thirty lakh”, the words “fifty lakh” shall respectively be substituted. 40

Amendment of section 142.

69. In section 142 of the Customs Act, in sub-section (1), after the proviso, the following clause shall be inserted, namely:—

“(d) (i) the proper officer may, by a notice in writing, require any other person from whom money is due to such person or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount; 45

(ii) every person to whom the notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before the payment is made, notwithstanding any rule, practice or requirement to the contrary; 50