

CBIC issues guidelines for launching prosecution under the CGST Act

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Summary

The Central Board of Indirect Taxes & Customs (CBIC) has issued guidelines for launching of prosecution in relation to offences punishable under the CGST Act¹. The CBIC has clarified the procedure for the sanction of prosecution, withdrawal, monitoring of prosecution, maintenance of database of prosecution proceedings, compounding of offences, etc. The CBIC stated that the cases, where the sanction for prosecution is approved after the issue of these instructions shall be dealt in accordance with the provisions of these instructions irrespective of the date of the offence.

Particulars	Guidelines
Sanction of prosecution	<ul style="list-style-type: none">• The nature and adequacy of evidence should be carefully assessed before prosecution. The standard of proof in a criminal prosecution is higher than that in an adjudication proceeding, therefore, the evidence should be weighed and must meet the criteria of criminal prosecution, even if the demand gets confirmed in the adjudication proceedings.• Prosecution should not be launched in cases of technical nature or additional tax claim due to a difference in the interpretation of law. The evidence should be adequate to establish beyond reasonable doubt that the person has committed offence². Prosecution complaint may be filed even before the adjudication of the case³. In case of an arrest, it can be initiated even before the issuance of a show cause notice (SCN).• In case of a public limited company, prosecution can be launched against only such persons who are involved in regular operations and have taken part in committing tax evasion or had connived in it.
Monetary limits	<ul style="list-style-type: none">• The prosecution can be initiated where the amount of tax/ ITC/ refund in relation to specified offences is more than INR 5 crore. However, in case of habitual evaders and arrest cases, the monetary limit shall not be applicable.
Authority to sanction prosecution	<ul style="list-style-type: none">• An approval from the Principal Commissioner/Commissioner of CGST is required to file prosecution complaint. However, where the cases are investigated by the DGGI⁴, the sanction of the Principal Additional Director General/Additional Director General, DGGI of the concerned zonal unit/ headquarters is required.

¹ Central Goods and Services Tax Act, 2017

² had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed *mens-rea* for committing offence

³ In view of the Supreme Court decision in case of Radheysham Kejriwal [2011 (266) ELT 294 (SC)]

⁴ Directorate General of GST Intelligence

<p>Procedure for the sanction of prosecution</p>	<p>Arrest⁴ under GST:</p> <ul style="list-style-type: none"> • When an arrest is made during the investigation, and no bail has been granted, then the prosecution complaint should be filed before the court within 60 days of arrest. • The proposal of filing complaint in the investigation report⁵ shall be forwarded⁶ to the Principal Commissioner/ Commissioner, who shall examine the proposal and take a decision⁷. A sanction order shall be issued along with an order authorising the investigating officer⁸ of the case to file the prosecution complaint in the competent court. • Similar procedure shall be followed by the officers of equivalent rank of the DGGI, where an arrest is made in cases of investigation conducted by the DGGI. <p>Filing of prosecution against legal person, including natural person-</p> <ul style="list-style-type: none"> • In case of a company, both the legal person and natural person are liable for prosecution. Similar provisions have been made for partnership firm/ LLP⁹/ HUF¹⁰ /Trust. • In case of launching prosecution before adjudication of the case, the competent authority¹¹ shall record the reasons, and forward the proposal to the sanctioning authority. The decision of the sanctioning authority shall be informed to the concerned adjudicating authority. In all other cases, the adjudicating authority, while passing an order, can indicate on an order if the case is relevant for prosecution to obtain the sanction of prosecution. • In cases where an SCN has been issued by the DGGI, the recommendation of the adjudicating authority for the filing of prosecution shall be sent to the designated authorities¹². In case the adjudicating authority does not form any view, file will be resubmitted to them to take a view on prosecution. • The competent authorities¹³, considering the seriousness of offence, can decide the case for sanction of prosecution, irrespective of whether the adjudicating authority has recommended prosecution or not.
<p>Procedure for the withdrawal of sanction-order of prosecution</p>	<ul style="list-style-type: none"> • In cases where prosecution has been sanctioned, but the complaint has not been filed, and new evidence available for sanction, the Commissionerate should immediately bring the same to the notice of the sanctioning authority, who may recommend the withdrawal of sanction of prosecution, to the jurisdictional authority¹⁴.
<p>Monitoring of prosecution</p>	<ul style="list-style-type: none"> • The concerned authorities shall update all the prosecution entries in the investigation module within 48 hours of the sanction of

4 section 69 of CGST Act 2017

5 Annexure-I i.e., investigation report for launching prosecution

6 within 50 days

7 section 132 of CGST Act, 2017

8 at the level of Superintendent

9 Limited Liability Partnership

10 Hindu Undivided Family

11 Additional/Joint Commissioner or Additional/Joint Director, or DGGI

12 Pr. Additional Director General/Additional Director General, DGGI of the concerned zonal unit/ Headquarters

13 Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General of DGGI

14 Pr. Chief Commissioner/Chief Commissioner

	prosecution. Further, in-charge of supervising prosecution cases shall ensure timely entries in the database.
Compounding of offences	<ul style="list-style-type: none"> • The person being prosecuted should be given an offer for the compounding of offence by the designated authority.

Our comments

The CBIC has emphasised upon the repercussions of prosecution for the person involved, and therefore, the competent authority should make decision on a case-to-case basis. Further, in case of public limited companies, prosecution cannot be initiated indiscriminately against all the directors. It should be restricted to only such persons who are involved in the day-to-day operations of the company and have taken an active part in committing tax evasion or had connived in the same. This is a welcome step by the CBIC and will help in curbing malpractices.

The guidelines prescribe adequate safeguards before the launch of prosecution, which may provide relief to the industry and businesses. The authorities should take these guidelines into consideration, and follow the procedure prescribed therein.

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