

Executive Summary

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 major findings of this performance audit are as under:-

- Eleven cases from 5 Commissionerates involving meagre amount of ` 1.82 lakh are under prosecution in various Courts for periods exceeding 30 years. (Paragraph 2.4)
- Audit could not identify the pendency period in 43 prosecution cases having a revenue implication of ` 31.50 crore as department was not able to provide details of date of filing of complaint. (Paragraph 2.4)
- 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. (Paragraph 2.6)
- 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. (Paragraph 2.6)
- 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. (Paragraph 2.8)
- Out of 46 selected Commissionerates, 30 Commissionerates reported that they are not doing any review on pending prosecution cases. (Paragraph 2.9)
- Instances of delay in Court proceeding due lack of proper attention by the departmental officers were noticed. (Paragraph 2.10)
- In 19 cases where prosecution was initiated, none of the accused persons had been informed separately in writing about the offer of compounding. (Paragraph 2.12)

- In 24 Commissionerates no remarks were found in the Director General (Inspection) reports pertaining to prosecution cases. (Paragraph 2.14)
- The department is not reviewing the prosecution cases for withdrawal as per Board's Circular dated 4 April 1994. (Paragraph 2.18)

Recommendations

- Ministry may ensure that all long-pending prosecution cases are reviewed at periodic intervals by Chief Commissioners at field level to ensure adequacy of action taken to satisfy the Court about existence of sufficient grounds for permitting withdrawal of complaint where warranted.
- Board may strengthen its monitoring mechanism at the Chief Commissionerate level through the MIS/Monthly Technical Reports it receives from its various field formations.
- The Ministry may consider discussing the pendency of prosecutions during monthly Monitoring Committee meetings to be convened by Commissioners. As on date, such meetings are being convened regularly at all Commissionerates to discuss internal audit findings.
- The Board may consider having a specially trained group of personnel to handle issues relating to prosecution cases and courts to have an efficient monitoring over its cases and its revenue.
- The Board needs to examine critically the reasons as to why the adjudicating authorities are not explicitly concluding whether a case is fit for prosecution or not and take corrective action accordingly.
- The Board may consider issuing comprehensive instructions on the approvals issued for prosecution and its follow up by the subordinate field formations in the case of both DGCEI and the Chief Commissioners of Central Excise.