

Chapter 2 : Administration of Prosecution and Penalties

The Board in its Circular dated 9 August 1990 issued instructions to its field formations with reference to the launching of prosecution cases and the procedures to be followed.

2.1 Launching of Prosecution

The provisions relating to prosecution in the Central Excise Act are stringent. Further, the Board issues guidelines from time to time to regulate prosecution related practices and procedures. These guidelines are issued to ensure that the limited manpower, time and resources of the Department are utilised efficiently. The main guidelines are contained in Circular No.15/90-CX.6 dated 9 August 1990. They, *inter alia*, state that:-

- a) Launching of prosecution shall be with the final approval of the Chief Commissioner after the Commissioner in the light of the guidelines has carefully examined the case.
- b) Prosecution should not be launched in cases of technical nature, or where the additional claim of duty is based totally on a difference of interpretation of law. Before launching any prosecution, it is necessary that the department should have evidence to prove that the guilty had knowledge of the offence, or had fraudulent intention to commit the offence.
- c) The monetary limit for launching prosecution has been enhanced to ` 25 lakh by the Board, vide its letter of F. No. 208/31/97-CX.6 dated 12 December 1997. In the case of habitual offenders, the total amount of duty involved in various offences may be taken into account while deciding whether prosecution is called for. If there is evidence existing to show mala fide intentions and systematic engagement of a person or company involving evasion over a period of time, prosecution should be considered irrespective of the monetary limit.
- d) One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. Prosecution should be launched against top management when there is adequate evidence/material to show their involvement in the offence.
- e) Persons liable for prosecution should not normally be arrested unless their immediate arrest is necessary.

- f) Prosecution should normally be launched immediately after adjudication has been completed. However, if the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings if it is apprehended that undue delay would weaken the department's case.
- g) Prosecution should not be kept in abeyance on the ground that the party has gone in appeal/revision. However, in order to avoid delays, the Commissioner should indicate at the time of passing the adjudication order itself whether he considers the case to be fit for prosecution so that it should be further processed for being sent to the Chief Commissioner for sanction.

2.2 Procedure for Prosecution

Procedure envisaged for prosecution in the Circular dated 9 August 1990 is as follows:-

- a) In all such cases where the Commissioner of Central Excise in charge of judicial work is satisfied that prosecution should be launched, an investigation report for the purpose should be carefully prepared and signed by an Assistant Commissioner, endorsed by the Commissioner and forwarded to the Chief Commissioner for decision within one month of the adjudication of the case. A criminal complaint in a Court of Law should be filed only after the sanction of the jurisdictional Chief Commissioner has been obtained.
- b) Prosecution, once launched, should be vigorously followed. The Commissioner of Central Excise, in-charge of judicial work should monitor cases of prosecution at monthly intervals and take corrective action wherever necessary, to ensure that the progress of the prosecution is satisfactory. In large cities, where a number of Central Excise Divisions are located at the same place, all the prosecution cases are to be centralised in one office to facilitate the officers to deal with the cases.
- c) To ensure the deterrent effect of prosecution, department must secure convictions with utmost speed through regular monitoring of the progress of the prosecution.
- d) Ensure avoiding delays in the court proceedings due to non-availability of the records required for production before the Magistrate. To do this, whenever a case is taken up for seeking the approval of the Chief Commissioner for launching prosecution, the concerned officer shall immediately take charge of all documents,

statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalised in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody.

- e) Section 9 of the Central Excise Act provides that imprisonment for a term which may extend to three years or a fine or both may be imposed on a person convicted for offences under this Section. Wherever Courts did not impose prison sentences despite statutory provisions or had let off the accused with light punishments, the Commissioners responsible for prosecution should study such judgements and shall examine filing of appeal under the law within the stipulated time with reference to the evidence on record. This is equally applicable to cases in which a Court orders acquittal without recording sufficient reasons in spite of adequate evidence provided to the Court.
- f) A Court of Law has the power to publish name, place of business etc. of a person convicted under the Act but exercises it sparingly. Department should make a prayer to the Court to invoke this Section in respect of all persons convicted under the Act.
- g) A Prosecution Register may be maintained in the Prosecution Cell of the Commissionerate Headquarters.

In cases where prosecution is to be launched and there is one Adjudication Officer for a number of factories located under the jurisdiction of different Commissionerates, the Circular No. 35/35/94-CX dated 29 April 1994 is to be followed.

2.3 Statistical information

There were 593 prosecution cases pending as on 31 March 2013 in 46 selected Commissionerates involving a money value of ` 2,011.56 crore. The year wise break-up of the cases is given below in the table:-

(Amount in lakh of Rupees)

Year	Prosecution cases							
	Opening balance		Additions		Disposal		Closing balance	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
2009-10	505	1,79,973.88	9	2,053.81	5	27,143.57	509	1,54,884.12
2010-11	509	1,54,884.12	47	15,154.80	7	279.75	549	1,69,759.17
2011-12	549	1,69,759.17	39	15,126.35	4	98.12	584	1,84,787.40

2012-13	584	1,84,887.40	35	21,542.53	26	5,273.73	593	2,01,156.19
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Source: Figures furnished by Commissionerates of Central Excise and Service Tax.

The details of the prosecution cases in the top ten Commissionerates from the selected Commissionerates are depicted in the following table: -

(Amount in lakh of Rupees)

Sl. No.	Commissionerate	Prosecution cases	
		No.	Amount
1.	Surat I	114	9,689.37
2.	Ahmedabad I	41	3,170.15
3.	Ludhiana	35	1,319.91
4.	Ghaziabad	29	10,180.84
5.	Indore	24	11,950.53
6.	Jaipur I	24	8,351.75
7.	Delhi I	21	9,137.91
8.	Mumbai III	20	1,984.16
9.	Bhopal	19	33,477.03
10.	Chandigarh I	19	9,933.54
	Total	346	99,195.19

Source: Figures furnished by Commissionerates of Central Excise and Service Tax.

- The pace of the disposal of the prosecution cases is slow in comparison to the additions during the FY 10 to FY 13.
- A total of 155 cases involving revenue of ` 128.60 crore were pending in Surat I and Ahmedabad I Commissionerates alone which constitutes 26 per cent and 6 per cent of the total prosecution cases and amount involved in the cases respectively.

2.4 Age-wise analysis

A compilation of pending prosecution cases with reference to age-wise analysis from the records made available from the selected Commissionerates revealed the following:-

(Amount in lakh of Rupees)

Sl. No.	Age-wise pendency of prosecution cases as on 31 December 2013	No. of cases	Amount
1.	Cases more than 30 years old	11	1.82
2.	Cases more than 20 and less than 30 years old	141	1,127.25
3.	Cases more than 10 and less than 20 years old	91	7,579.45

4.	Cases less than 10 years old	182	1,02,790.81
5.	Pendency period not known	43	3,150.03
	Total	468	1,14,649.36

Source: Figures furnished by Commissionerates of Central Excise and Service Tax.

- Eleven cases in five Commissionerates with a meagre amount of ` 1.82 lakh are under prosecution with various courts for a period exceeding 30 years.
- Under Raigad Commissionerate two prosecution cases against M/s. Shakthi Tobacco Stores and M/s. R M Patel Tobacco Company involving petty amounts of ` 9,000 and ` 750 are pending since 17 March 1973 and 23 September 1978 respectively.
- Under Ahmedabad I Commissionerate, four prosecution cases (M/s. United Steel Works, M/s. Ramco Paints Chemical Industries, M/s. Prithvi Plastic Packaging and M/s. Apollo Industries) with a total money value of ` 0.75 lakh (` 0.13 + ` 0.25 + ` 0.25 + ` 0.12) were pending for more than 30 years, since 1982.
- Under Surat I Commissionerate, a total of 114 prosecution cases with the money value of ` 96.89 crore was pending under various courts. Sixty six cases with the money value of ` 3.64 crore were pending for more than 20 years and 21 cases involving a value of ` 4.50 crore were pending more than 10 years.
- Under Chandigarh I Commissionerate, a total of 11 prosecution cases involving money value of ` 26.13 crore were pending for more than 10 years.
- In Ahmedabad I Commissionerate, two prosecution cases (M/s. Nylopic Industries and M/s. Khanna Textiles) involving value of ` 12,000 and ` 7.79 lakh were finally disposed of in 2009 and 2013, after 27 and 16 years respectively.
- In Chennai IV Commissionerate, a prosecution case against M/s. Vensuer Medica with money value of ` 1.22 lakh was disposed in December 2010 though adjudication had been completed in October 1984. The period taken to dispose of this case was 26 years.
- In Tirunelveli Commissionerate in three cases (M/s. Miladi Rubber Industries, M/s. Union Match Company and M/s. Everest Match Industries) having a total value of ` 9.95 lakh were disposed of after a period extending between 6 to 12 years.

- Audit could not quantify the pendency period in 43 prosecution cases having a revenue implication of ` 31.50 crore as the department was not able to provide details of the date of filing of complaint.

Audit notes that the long pendency was notwithstanding the fact that statistical details of prosecution cases are collected on monthly basis by Board/Directorate of Legal Affairs from its field formations through monthly technical report (MTR).

Despite specific instructions of the Board (vide Circular dated 9 August 1990) to DG (Inspection) to check the procedure and follow up of pending prosecution cases during inspection of Commissionerates, it appears that this item was not given adequate attention as thrust on this point was lacking in most of its reports checked by audit.

Even after introduction of the provision to withdraw pending prosecution cases vide Board's Circular dated 4 April 1994, it appears that periodic review exercise was not given due attention.

The Ministry's reply is awaited in respect of the specific instances raised (August 2014).

Audit recommended review of all pending prosecution cases where the delay is more than 10 years so that cases where prosecution might still have the intended deterrent effect could be focussed upon.

The Ministry replied (August 2014) that Circular dated 4 April 1994 gives clear guidelines on the subject.

Audit noted that long pendency of prosecution cases involves substantial expenditure for the Government. During the Exit Conference on 14 August 2014, Member (Central Excise) acknowledged that there were several prosecution cases where there is significant delay. However, once a prosecution case has been filed in a Court of Law in respect of any offence, the State has become a party to the proceedings and only the Court has the authority to bring the same to a close, unlike in a civil suit. Circular of 1994 depicts the position in this regard that only so long as the case has not been filed, the department has the authority to take decisions concerning proceeding with the same or otherwise. The matter regarding withdrawal of prosecution cases had on earlier occasion been taken up with the Department of Legal Affairs, Ministry of Law and Justice and the advice received was along the same lines. However, as recently as in 2012, the Hon'ble Supreme Court had held that when an adjudication falls, criminal proceeding also would not lie. CBEC is examining whether to take up the issue once again with the Ministry of Law and Justice, citing this decision.

However, Audit reiterates the need to strengthen monitoring of pendency of prosecution cases as long and unjustifiable delays would involve substantial expenditure for the Government. One of the intentions behind the purpose of introduction of provisions relating to prosecution, viz. to deter other potential offenders would also be defeated, if unwarranted delays are allowed to occur unchecked.

Audit also noted that though the discretion to allow withdrawal of prosecution ultimately rests with the Court, it is the department's responsibility to ensure periodic monitoring of the status of long-pending cases so as to ensure that cases which in the opinion of the department merit withdrawal are being brought to the notice of the Court alongwith all supporting facts at the proper time in terms of Sections 257 and 321 of Cr PC 1973. Audit also considers that the departmental machinery should be clear as to the role of respective authorities as regards such monitoring. Audit agrees with the view expressed by DG (Inspection) during the exit meeting that though DG (Inspection) in course of fulfilment of its inspection duties, may come to possess data on prosecution cases, the office, not being entrusted with line functions, would not be the appropriate functionary to monitor the pursuance of effective and efficient follow-up of prosecution cases.

Recommendation No.1

- a) 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.
- b) Responsibility for monitoring of aspects including periodicity, at all India level is to be prescribed with clear demarcation of roles and responsibilities.
- c) Any mechanism for monitoring should also involve tracking the expenditure details in respect of prosecution cases.

2.5 Prosecution in cases involving meagre revenue

As per Board's letter dated 26 July 1980, a monetary limit of ` 10,000 was prescribed for launching of prosecution in order to avoid prosecution in minor cases. This limit was revised to rupee one lakh vide Circular dated 9 August 1990. Further, with effect from 4 April 1996, the limit was revised to

₹ 5 lakh. The monetary limit for prosecution is ₹ 25 lakh with effect from 12 December 1997. However, in the case of habitual offenders the above limit is not applicable. The following table depicts instances where minor cases were taken up for prosecution notwithstanding specific minimum threshold prescribed by the Board:-

(Amount in lakh of Rupees)

Sl. No.	Threshold limit and date from which the limit applies	No. of cases where prosecution was launched* although the duty amount involved is less than threshold limit	Amount
1.	₹ 10,000 between 26 July 1980 and 8 August 1990	11	0.38
2.	₹ 1 lakh between 9 August 1990 and 3 April 1996	6	3.14
3.	₹ 5 lakh between 4 April 1996 and 11 December 1997	2	6.04
4.	₹ 25 lakh with effect from 12 December 1997	17	159.01
Total		36	168.57

*Upto 31 March 2013.

Source: Figures furnished by Commissionerates of Central Excise and Service Tax.

The Ministry's reply is awaited (August 2014).

2.6 Delay in submission of Investigation report

As per para 3(i) of the Board's Circular dated 9 August 1990, in all cases where the Commissioner of Central Excise in charge of judicial work is satisfied that prosecution should be launched, a proposal/investigation report for the purpose of launching prosecution should be forwarded to the Chief Commissioner for decision within one month of the adjudication.

On examination, we observed that in 138 prosecution cases in 27 Commissionerates, the forwarding 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. Similarly, in 43 cases from DGCEI units in Kolkata, Delhi and Mumbai, there was delay ranging from two months to over four years in forwarding the investigation reports. The abstract of delays in submission of investigation report is depicted in the table below:-

Sl. No.	Delay	No. of prosecution cases
1.	More than three years	19
2.	Between one and three year	61

3.	Less than one year.	101
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Source: Figures furnished by Commissionerates of Central Excise and Service Tax.

Further, in 61 cases under 12 Commissionerates and in 4 cases in 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. The illustrative cases that depicts the position clearly as observed by Audit:

2.6.1 M/s. P.K. Profile (P) Ltd., Fatehpur are manufacturers of goods covered in Chapter 72 of Central Excise Tariff Act, 1985 in Lucknow Commissionerate. Audit noticed that the show cause notice (SCN) involving duty of ` 1.57 crore was adjudicated on 4 July 2000. However, proposal including Investigation report was forwarded to Chief Commissioner only on 9 September 2010 i.e., after a delay of more than ten years.

2.6.2 M/s. Secure Industries Ltd., Sahibabad are manufacturers of mortise locks in Ghaziabad Commissionerate. Audit noticed that the SCN involving duty of ` 29.71 lakh was adjudicated on 25 October 2001. However, proposal including Investigation report was forwarded to Chief Commissioner only on 26 October 2010 i.e., after a delay of more than nine years.

2.6.3 In the case of M/s. Urbane Industries, manufacturers of fire reinforced plastic articles for Railways in Chennai II Commissionerate, we observed that the SCN involving duty of ` 59.55 lakh was adjudicated on 26 February 2003, and the case was re-adjudicated as per CESTAT instructions on 14 February 2007. However, proposal including Investigation report was forwarded to Chief Commissioner only on 10 July 2007 i.e., after de novo adjudication resulting in delay exceeding four years.

2.6.4 M/s. Norton Electrical Industries (P) Ltd., are manufacturers of ACSR Containers in Chennai II Commissionerate. Audit observed that the SCN involving duty of ` 30.84 lakh was adjudicated on 7 April 1995. The Investigation report was sent on 14 February 1997 after a delay of twenty-two months.

2.6.5 M/s. Vijay Aqua Pipes (P) Ltd. are manufacturers of rigid PVC pipes in Chennai II Commissionerate. Audit observed that the SCN involving ` 60.93 lakh was adjudicated on 31 March 2005. The Investigation report was sent on 25 January 2007. This resulted in a delay of twenty-three months.

The delays in submitting the Investigation reports in the above cases were clearly in contravention of Board's Circular dated 9 August 1990. Audit

observes that a major purpose behind the mechanism of prosecution, viz. to have a deterrence effect on other potential offenders is not achieved in such cases.

The Ministry is yet to respond in respect of individual instances (August 2014).

Recommendation No.2

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 Board has accepted the recommendation.

2.7 Approval by sanctioning authority

As per para 2(i) of Board's Circular dated 9 August 1990, prosecution should be launched with the final approval of the Chief Commissioner after the case has been carefully examined by the Commissioner in the light of the guidelines. The sanction accorded to launch a prosecution may appear to be an administrative act. However, as decided by CEGAT in UOI vs. Greaves Ltd.², without prior approval of the Chief Commissioner, prosecution cannot continue and the accused has to be acquitted.

2.7.1 On scrutiny from the selected Commissionerates, we observed that in five cases (Calicut – 2, Chennai IV – 1, Cochin - 2), the copies of approval by Chief Commissioner to initiate prosecution were not available in the relevant files. Further, the department could not provide any other evidence of permission accorded. Hence, Audit could not confirm whether the competent authority had sanctioned the prosecution in these cases.

2.7.2 It was seen that in respect of M/s. Mody Chemi Pharma Private Ltd., and Indian Smelting & Refining Company Ltd., the adjudicating authority had recommended for prosecution. The case was adjudicated on 31 October 2011 and 4 December 2012 respectively. However, despite Board's directions of not keeping the prosecution cases in abeyance, prosecution proceedings had not been initiated till February 2014.

When we pointed it out, the department stated (February 2014) that proposal to initiate prosecution though prepared was not sanctioned, as there was a stay of recovery of dues by CESTAT. The sanctioning authority had issued instructions to submit fresh prosecution proposal if the demand is sustained in the appeal.

² 2002 (139) ELT 34 (CEGAT)

As per Board's direction, the prosecution should not be delayed or kept in abeyance for confirmation of demands in appeal. Hence, the decision of non-initiation of prosecution until the decision on appeal is not in consonance with the Board's order.

The Ministry's reply is awaited (August 2014).

2.8 Delay in filing complaint

As per para 3 (i) of Board's Circular dated 9 August 1990, a criminal complaint in a Court of Law should be filed only after the sanction of the Chief Commissioner has been obtained for prosecution. Further, para No. 2.8 of the Chapter 17 of the Central Board of Excise and Customs Manual of Supplementary Instructions, 2005 stipulates that once prosecution is sanctioned, the complaint should be filed in Court without any considerable delay.

We enquired from the selected Commissionerates regarding the quantum of time taken for filing the complaint in the Court of Law after obtaining of the approval from Chief Commissioner/DGCEI. We observed that in 175 cases relating to 37 Commissionerates and DGCEI, Delhi there was delay of a month to 15 years in filing complaints with the Court of Law. The abstract of delays in filing complaint in Court of Law is given below in the table:

Sl. No.	Delay	No. of prosecution cases
1.	More than three years	20
2.	Between one and three years	47
3.	Less than one year	108

Source: Figures furnished by Commissionerates of Central Excise and Service Tax.

In another 21 cases in 6 Commissionerates and DGCEI, Delhi the complaints are yet to be filed in the Courts although periods ranging between one and six years had lapsed since date of sanction. Further, in 15 cases, in three Commissionerates, extent of delay was not ascertainable owing to inadequacy of information. Illustrative cases depicting delay are provided below:-

2.8.1 During the scrutiny of prosecution case file of M/s. Foursquare Packaging Pvt. Ltd., in Raigad Commissionerate, we observed that the approval for launching prosecution was accorded by Chief Commissioner on 31 March 1997. However, the department filed the complaint only on 22 March 2012, after a delay of more than fifteen years.

2.8.2 During the scrutiny of prosecution case file of M/s. Interdrill (Asia) Ltd., in Raigad Commissionerate, Audit observed that approval for launching prosecution was accorded by DGCEI, Mumbai on 17 May 2004 and the complaint was filed only on 26 March 2012, after a delay of more than seven years.

2.8.3 During the scrutiny of prosecution case file of M/s. Metal Weld Electrodes manufacturers of Welding Electrodes & Equipments in Chennai IV Commissionerate, Audit observed that the administrative approval for launching prosecution was accorded by DGCEI, New Delhi on 16 March 1999 and the complaint was filed only on 14 December 2005, after a delay exceeding five years.

2.8.4 During the scrutiny of prosecution case file of M/s. Khan Garments, manufacturer of garments falling in Hyderabad I Commissionerate, Audit observed that the administrative approval for launching prosecution was accorded by Chief Commissioner on 11 April 2007 and the complaint was filed only on 17 December 2012, after a delay of more than five years.

Clearly, any deterrent effect would be lost by delays extending over long periods.

The Ministry's response in respect of the individual cases pointed out is awaited (August 2014).

Audit recommended that the Board should conduct detailed analysis of these cases and put in place a mechanism at the highest level to monitor that complaints are filed within the shortest time possible after obtaining the sanction from the competent authority.

Accepting the recommendation, the Ministry informed that Chief Commissioners would be directed to ensure filing of sanctioned prosecutions in the shortest possible time.

Member (Central Excise) acknowledged during the Exit Conference that as regards long delays in matters where filing in Court is yet to take place though sanction has been obtained a long time ago, there is need for a mechanism to monitor the reasons why the case is yet to be filed. Noting that the standard of proof required for offences is much higher compared to that required for civil suits, Member stated that fixing of a time frame may not be possible.

Audit observes that there is need for introduction of a provision to the effect that if a case is not filed within a period to be fixed by the department, sanction would be treated as withdrawn. Such items would also need to be reported in the proposed Management Information System under

consideration of the Board. Provision may also be incorporated to the effect that in case the need for filing of complaint is subsequently felt necessary, fresh sanction from CBEC should be obtained. The need for such prescription of timeframe is essential also so as to protect the rights of taxpayers, notwithstanding the fact that they may be offenders. Hence, we reiterate that a suitable time limit may be specified and complied with.

2.9 Review of prosecution cases

As per para 3 (ii) of Board Circular dated 9 August 1990, prosecution once launched should be vigorously followed. The Commissioner of Central Excise in-charge of judicial work should monitor the cases of prosecution at monthly intervals and take corrective action wherever necessary to ensure that the progress of prosecution is satisfactory.

We enquired from the selected 46 Commissionerates regarding status of review of pending prosecution cases at monthly intervals. Thirty Commissionerates informed Audit that no review of the pending prosecution cases was conducted.

Chennai IV, Delhi I, Hyderabad I, and Tirunelveli Commissionerates intimated that the review of the pending prosecution cases is conducted. However, we observed that there was no documentary evidence for the same.

Bengaluru II, Bengaluru ST, Bhopal, Indore, Mangalore, Mumbai I ST, Pondicherry and Raipur Commissionerates intimated that they are doing review of the pending prosecution cases at monthly intervals.

Ahmedabad I and Chennai II Commissionerates intimated that monitoring of pending prosecution cases was being done on monthly basis by way of MTR. The reply is not acceptable for the reason that the MTR merely contains the statistical information as to the opening balance, receipts during the month, clearance during the month and the closing balance of the prosecution cases and it does not contain any other detail for the purpose of monitoring and to take corrective action wherever necessary to ensure that the progress of prosecution is satisfactory.

Hyderabad II Commissionerate informed that it had a lone case, which was yet to be launched, and no monthly review is being conducted.

Mumbai III Commissionerate is yet to furnish its reply (August 2014).

From the above information received, we observe that majority of the selected Commissionerates did not conduct any review of the pending prosecution cases which could result in depiction of incorrect statistics as well as prolonged pendency of the cases. A few cases highlighting these facts are illustrated below: -

2.9.1 Audit noticed that in Raipur Commissionerate, one prosecution case (M/s. Gunwant Rai Jani) was decided by the District Court on 8 September 2005 in which the Court has relieved the party without any charge but this case is still being shown as a pending prosecution case. The department stated (February 2014) that it is regularly monitor the status of the prosecution cases and that the case of M/s. Gunwant Rai Jani has been inadvertently shown as pending prosecution case. Necessary action is being taken to figure out the actual status of the case from the list of prosecution cases of the Commissionerate.

2.9.2 In a prosecution case against M/s. Sedsel Rubbers, in Cochin Commissionerate, we observed that non-bailable warrant of arrest against the accused was first issued on 8 July 2004. However, the outcome of this warrant is not available in the file. Another non-bailable warrant of arrest was issued by the Additional Chief Judicial Magistrate (EO) on 29 February 2012, i.e. after a period of more than seven years. There is no mention in the file as to what happened during the intervening seven years. In the Superintendent of Central Excise (Preventive)'s report dated 19 November 2012, it was recorded that despite all efforts the present whereabouts of the accused could not be determined. The case is still pending in the Court.

When we pointed this out, the department intimated (May 2014) that a non-bailable warrant dated 25 February 2014 had been entrusted to Preventive unit for execution.

2.9.3 Scrutiny of records of prosecution in case of M/s. Radhe Krishna Textile Mills, Ahmedabad, revealed that the Commissioner, Ahmedabad I Commissionerate had originally sought approval from the Chief Commissioner for launching prosecution against M/s. Radhe Krishna Textile Mills and seven other persons vide letter dated 6 February 2009. Subsequently, several correspondences were made with the Chief Commissioner's Office by the Asst. Commissioner/Deputy Commissioner (Legal) of the Commissionerate for granting approval. Finally, the Chief Commissioner accorded sanction to launch prosecution only against three persons vide letter dated 4 August 2009 and directed the Commissioner to locate the remaining persons so that the prosecution against them could be considered. Jt. Commissioner (Legal) communicated the remarks of the Chief Commissioner to the jurisdictional AC vide letter dated 31 August 2009.

Thereafter, after a gap of more than three years, DC (Legal) reminded the matter to the jurisdictional AC vide letter dated 26 September 2012. However, so far no communication has been received in the Commissionerate from the jurisdictional Division.

2.9.4 Scrutiny of records of prosecution in case of M/s. Galaxy Exports, Jetpur, in Rajkot Commissionerate revealed that the Commissioner had originally submitted proposal to the Chief Commissioner for approval of launching prosecution against M/s. Galaxy Exports, Jetpur and four other persons vide letter dated 12 March 2009. After prolonged correspondence, the Chief Commissioner accorded sanction to launch prosecution against M/s. Galaxy Exports, Jetpur vide letter dated 15 November 2010. However, it was also directed to make efforts to collect further evidences specifically against one of the four persons. The Addl. Commissioner (Legal) communicated these remarks to the jurisdictional AC vide letter dated 25 November 2010. Thereafter, a reminder was sent to the jurisdictional AC to intimate the action taken in the matter. The jurisdictional AC in turn reported to the Commissionerate about filing of criminal complaint and sent copy of criminal complaint vide letter dated 9 February 2011. One more reminder was sent to the jurisdictional AC requesting to intimate the action taken in the matter vide letter dated 16 March 2011. No further correspondence was available on file.

When we pointed this out, the department stated (March 2014) that the Divisional Office had made sincere efforts through the jurisdictional Range Superintendent to collect further evidence against the concerned person, but could not succeed.

2.9.5 In the case of M/s. Victor Industries, in Kolhapur Commissionerate, the accused in the prosecution case was discharged by the Court. One of the grounds was that the complainant had not attended court during the last 15 years. When we pointed this out, the department stated (February 2014) that the periodical review of prosecution cases is conducted at monthly meetings with the divisional heads and daily proceedings are monitored from the lower Court website by the Prosecution cell. As regards the case of M/s. Victor Industries, it was mentioned that main reason for acquittal is defense by accused that the appellate authorities have decided the case in their favour.

However, Audit was unable to find on record details of periodical review of prosecution cases. Further, the Court in its order had explicitly stated that complainant had not attended the Court for the last 15 years.

2.9.6 Audit scrutiny revealed that the Additional Collector of Central Excise, Meerut accorded permission in April 1986 for initiating criminal proceedings against M/s. Heera Electrodes Rampur and a partner of the firm, for the offences committed under Section 9 of Central Excise Act, 1944. Assistant Collector (AC), Rampur Division forwarded (April 1988) the draft complaint against the party alongwith other required documents/records to the AC (Law) Central Excise, Allahabad for filing the complaint in the court of Special CJM Allahabad. Despite at least seven letters between May 1988 and September 1992 addressed by AC, Rampur, no replies regarding filing of the complaints were furnished by the AC, Allahabad. Besides, no further records were available in the Commissionerate which could provide the status of filing of the complaint in the court.

2.9.7 Audit scrutiny revealed that Collector, Meerut sanctioned on 27 January 1987 prosecution against M/s. Dilkhush Biri Factory, Rampur and its proprietor. Assistant Collector, Rampur Division forwarded a draft complaint against the above party in April 1988 alongwith other required documents/records to Assistant Collector (Law) Central Excise, Allahabad for filing the complaint in the Court of Special CJM. Despite five letters addressed by the AC, Rampur between April 1990 and September 1992, no reply was furnished by the AC, Allahabad regarding filing of the complaint. Further, no records were available in the Commissionerate which could provide the status of filing of the complaint in the Court.

2.9.8 Scrutiny of the records of Ghaziabad Commissionerate revealed that the Chief Commissioner, Kanpur accorded in February 1997 permission for initiating prosecution proceedings against M/s. Goyal Gases (P) Ltd., the Managing Director and an authorized representative of firm in the jurisdictional Court. Special Public Prosecutor (SPP) prepared and forwarded the draft complaint to Assistant Commissioner, Division-II Ghaziabad for vetting in April 1999. The Range Officer informed (February 2004) the Superintendent (Technical) that CEGAT had set aside the OIO of the Commissioner in July 1999. The department went in appeal against the CEGAT order, which was dismissed in 2000 by the Hon'ble Supreme Court. He further added that as there were no Government dues against the party in the impugned case, there was no need to file the complaint. SPP informed (March 2009) that no complaint had been filed. However, Audit noted that the matter is shown as pending for disposal for more than 10 years. Clearly, no review of prosecution cases at monthly intervals is being conducted by the Commissionerate.

The Ministry's response in respect of individual instances pointed out is awaited (August 2014).

The Ministry however informed that instructions in Circular of August 1990 would be reiterated. Further, a MIS Committee Report on automation of MIS, which includes prosecution data as well, is under the examination of the Board.

Recommendation No. 3

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.

2.10 Lack of proper attention by the department in respect of prosecution cases

As per para 3(iv) of Board's Circular dated 9 August 1990, as a matter of practice, whenever a case is taken up seeking the approval of the Chief Commissioner for launching prosecution, the concerned officers should immediately take charge of all the documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalised in consultation with the Public Prosecutor at the time of drafting the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody.

We looked into the records at the selected Commissionerates to check aspects relating to the delays in court proceedings due to lack of attention by the departmental officials. The statistical information furnished by the 18 Commissionerates shows that in majority of the cases the pendency is more than three years for the prosecution cases pending under different appellate forums. Chennai II Commissionerate had not furnished any reply. In contravention to the claim that there were no departmental lapses leading to delay in court proceedings, a few cases depicting lapses on the part of the department are given below:-

2.10.1 Audit observed from scrutiny of case file of M/s. Caps & Containers, falling in Chennai II Commissionerate that though the prosecution was launched as early as August 1987, the case is still under trial even after a lapse of more than 25 years. The duty amount involved was ` 0.51 lakh covering the period 1979-80 and 1980-81.

Audit also observed from the letters dated 6 September 1995, 18 April 1996 and 13 May 1996 that records such as sales day book, sales day register and delivery challans were not produced to the Magistrate Court upto May 1996. Thus, there was a delay of more than eight years in production of these

records by department, which is not in compliance with the Board's instruction. The delay was also attributable to other reasons like non-appearance of departmental officials and counsel. The Court also desired early disposal of the case as seen from letter dated 11 September 2012. The case is still under trial.

2.10.2 In an offence case involving evasion of Central Excise duty by M/s. P.R. Industries, in Delhi I Commissionerate, a complaint was filed on 22 March 2003 in Additional Chief Metropolitan Magistrate, Patiala House Court. In spite of several letters from the Advocate who presented the case in Court on behalf of the department for furnishing proof of summons, no reply was furnished by the department. The prosecution evidence was closed due to not reaching of witness in Court in time on 27 October 2009. This case is still pending.

2.10.3 In another case of evasion of Central Excise duty relating to M/s. Toto Bubbles India Ltd. in Jaipur I Commissionerate, a complaint was filed on 10 August 1992 in Economic Offence Court, Jaipur. Audit observed from the prosecution file that requisite documents such as registration certificate issued by Director General of Technical Development was also not produced to the Court till May 2005 despite several chances given to the department.

When we pointed this out the department replied (February 2014) that all the pending prosecution cases are being monitored regularly. When any additional information/documents is required by the Court, the same is submitted after obtaining it from branches. As regards appearance of the witness, generally all the officers are very sincere in attending the cases, except in circumstances beyond their control. The Court proceeding is under the domain of the competent Court and pendency is not on account of departmental action.

The reply is not tenable because as per Board's Circular dated 9 August 1990, whenever a case is approved for launching prosecution, a list of all documents is to be finalised that would be required to be produced before a Court in consultation with the Public Prosecutor at the time of drafting of the complaint. It was observed that in this case, the delay occurred due to non-submission of required document in time, before court and abstention of witness from appearing before the Magistrate on the specified dates.

2.10.4 In the prosecution case of M/s. Tata Davy Limited, Calcutta in Jaipur II Commissionerate, a complaint was filed on 14 September 2000 in the Court of the Additional Chief Judicial Magistrate (Economic Offence), Jaipur. The Advocate in the letter dated December 2007 requested the department for the basic documents on the basis of which central excise duty evasion of

` 1.01 crore was arrived at in the case. In spite of several letters from the Advocate no documents were produced in the court and witnesses from the department side did not attend the Court on the specified dates. This case is still pending.

2.10.5 In case of M/s. Indian Magnetics Ltd., in Chandigarh I Commissionerate, the department filed Criminal Complaint in the CJM Court on 14 August 2000 through Addl. Central Government Standing Counsel. As per record, the case was fixed for pre charge evidence on 24 March 2001 in the Court of CJM, Shimla, but the department failed to produce evidence in the Court till 28 June 2013. Pre charge evidence on behalf of complainant was closed by the Hon'ble Court. The case had come up for consideration of charge on 15 July 2013. There is nothing available in file showing any further progress on the case.

2.10.6 In case of M/s. Sankeshwar Industries, in Ludhiana Commissionerate, the department had filed Criminal Complaint in CJM Court Ludhiana on 22 December 1992 for intent to evade duty of ` 19.01 lakh alongwith penalty. On 12 April 2006, the original documents of the case were handed over to the Advocate dealing with the said case. There was no other material available in the file post this event.

2.10.7 Recovery of ` 8.71 lakh was confirmed against M/s. Gopal Dass Jagat Ram (Pvt.) Ltd., in Ludhiana Commissionerate, in April 1982 and Prosecution against the Party was launched in the CJM Court, Ludhiana in March 1984 by the department. However, Hon'ble Supreme Court ordered in July 1984 ex-parte stay of prosecution proceedings. It was noticed that the appeal filed by the party was dismissed by the Supreme Court in June 1996. The department requested its Advocate in February 2000 to revive the Prosecution proceeding and concerned Advocate intimated in February 2003 to the department that no record relating to the case was available with him. Further status regarding the case was not available on record.

2.10.8 In the case of M/s. Sham Sunder Dyeing Factory in Ludhiana Commissionerate, the department filed Criminal complaint in the Court of CJM Ludhiana in February 1985 for evasion of central excise duty of ` 4093.47 including Personal Penalty. CJM Court had decided the case in November 1989 in favour of the accused. The department again filed appeal in January 1990 in the Court of Additional Session Judge against the orders of CJM, Ludhiana. The Hon'ble Session Court in April 1990 directed the department and the accused to appear before trial Court on 21 May 1990 which would hold further inquiry in accordance with the law. However, the accused filed

petition in July 1990 in Hon'ble Punjab and Haryana High Court against the orders of Additional Session Judge. The Petition was dismissed in December 1990 with order to both the parties to appear before the trial Court on 16 January 1991. We observed that the department had failed to pursue the matter thereafter and even the Legal Cell had no record relating to the case.

2.10.9 In respect of M/s. Stelco Strips Ltd. in Ludhiana Commissionerate, the department filed a complaint in the court of CJM Ludhiana in June 2008 against evasion of duty and personal penalty totalling ` 92.48 lakh. The case was fixed for evidence eight times (between June 2010 to July 2013) but the department failed to produce the evidence/witnesses. In spite of warning by the Court as intimated by Advocate in October 2011, no evidences/witness has been produced by the department in the Court of Law till date.

2.10.10 In case of M/s. Seemex Industries Ltd., Paonta Sahib, in Chandigarh I Commissionerate, the department had filed Criminal Complaint in CJM Court, Nahan on 28 May 2004 against evasion of duty of ` 12.41 crore alongwith penalty and interest. Court of CJM discharged the accused on 12 September 2011 as the department had failed to produce required documents including the Balance sheet. The balance sheet was one of the major documents relied upon by department in framing the case against the accused. Records indicated that even departmental witnesses (CW1 to CW5) did not possess substantial knowledge of the case. Oral witness of CW6 was not supported with any record.

2.10.11 Two criminal complaints were filed in the CJM Court Kandaghat by the department against M/s. Pamwi Tissue Papers Ltd., Barotiwala, in Chandigarh I Commissionerate, in March 1993 and May 1994 respectively against evasion of Central Excise duty to ` 632.07 lakh (` 563.76 + ` 68.31 lakh). In the first case, the department could produce only one witness who stated that no record was seized in his presence. It was further stated by the same witness that the record was seized in presence of other witnesses who had not been examined.

There was nothing on record to prove how and in what manner the record of the accused Company was seized and who were the witnesses. Department could not even prove that a raid had actually been conducted in the premises of the accused. As there was nothing on record to charge the accused persons CJM Court discharged three of the accused persons and declared one accused as Proclaimed Offender.

Against this order, department filed an appeal in September 2011 before Hon'ble High Court, Himachal Pradesh. High Court directed in September

2011 the lower Court to give one more opportunity to the department. However, no record was tendered by the department to prove its contention. Further, no statement was made by any witness nor any record was provided which could prove department's contention.

In the second case though four witnesses were present in the CJM Court but the department's Counsel had examined only one of them. The department again failed to prove as to who had visited the spot and took possession of documents at the assessee's company. As the department could not prove charge against accused persons, they were discharged by the Court.

Analysis of the above cases revealed that the department did not adhere to the instructions issued in Board's Circular dated 9 August 1990. Inter alia, it also proves that neither the review nor monitoring system was adhered by the department as prescribed in the Board's circular.

The Ministry's response in respect of the instances pointed out is awaited (August 2014).

Recommendation No.4

The Board should fix the responsibility on those who are responsible for not following the prescribed instructions issued by the Board in respect of prosecution cases.

The Ministry replied (August 2014) that Chief Commissioners will be directed to ensure that Board's Circulars are followed.

Recommendation No.5

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 Ministry replied (August 2014) that NACEN would be requested to organise training courses on Prosecution.

Audit notes that conduct of training courses by NACEN has to be followed by ensuring that the officers trained are posted in the Prosecution Cell or in the alterative, the officers when posted may be given training within a specified period of, say three months.

2.11 Commissionerates with low number of prosecution cases

We observed that in many cases fitting the norms, the adjudicating authorities did not recommend prosecution. There was nothing on record to indicate why prosecution had not been recommended. DG (Inspection) in its report on Hyderabad I Commissionerate dated February 2012 observed that

“during the last three years, 79 cases each involving more than ` 25 lakh duty amount were confirmed. However, out of which not even a single case appears to have been examined from the prosecution angle. Please make sure that all such cases need to be examined for launching prosecution at the time of passing of adjudication order itself and a note as to such examination shall be recorded in the file at the same time”. It was also observed that no uniform yardstick was adopted by the department to examine the suitability of a case for prosecution. A few illustrative cases on examination of adjudication files that appear fit for prosecution (based on presence of *mens rea* in addition to threshold monetary value being crossed) are narrated below:-

2.11.1 M/s. Cubex Tubings Ltd., in Hyderabad I Commissionerate fraudulently availed Cenvat credit on re-melted copper ingot/copper wire without receiving the said goods into their factory. In Order-in-Original dated 29 March 2011 (which was subsequently appealed against), duty of ` 28.28 lakh plus penalty equivalent to duty plus interest plus ` 6.00 lakh being personal penalties was demanded. No prosecution proposals were made even after three years from the date of original adjudication.

2.11.2 M/s. Sri Rama Industrial Products, in Hyderabad I Commissionerate, manufactured and cleared the mosquito coils with the brand names of Stop Lovely Night, Attack & Shoot Out belonging to others without obtaining the Central Excise Registration and without payment of duty by fraudulently claiming benefit of exemption notification dated 1 March 2003. It was adjudicated vide OIO dated 21 May 2010 demanding duty of ` 32.58 lakh on cleared goods and confiscation of mosquito coils. The same was appealed by the assessee during August 2010. No further progress is available as per the records. However, no efforts to launch a prosecution has been made so far even after 4 years from the date of adjudication.

2.11.3 During the search made by the DGCEI on 19 December 2007 in the premises of M/s. Covalent Laboratories (P) Ltd., in Hyderabad I Commissionerate it was found that there were unaccounted finished goods valued at ` 1.44 crore which were ordered to be confiscated. It was opined by the department that the assessee was indulging in systematic clandestine manufacture and removal of bulk drugs to evade central excise duty. The same were ordered to be confiscated vide OIO dated 9 September 2009 imposing a penalty of ` 10 lakh. However, no action to that effect has been taken by the department.

2.11.4 Order-in-Original dated 19 April 2013 confirmed the demand of duty of ` 3.25 crore alongwith penalty of same amount and interest on clandestine production and removal of goods by M/s. Sai Industries, who were engaged in the manufacture of chewing tobacco in Bhubaneswar I Commissionerate. In addition, a personal penalty of ` 5 lakh was also imposed.

2.11.5 The adjudicating authority through an OIO dated 6 March 2013 confirmed a duty of ` 1.78 crore alongwith penalty of same amount and interest on clandestine production and removal of impugned goods without payment of duty by M/s. Chaitanya Industries (P) Ltd., in Bhubaneswar I Commissionerate, engaged in the manufacture of M.S. Ingots. In addition, a personal penalty of ` 20 lakh was also imposed.

2.11.6 On a scrutiny of the OIO passed on 9 April 2009 in respect of M/s. MPS Steel Castings Ltd., in Calicut Commissionerate, the adjudicating authority concluded that the assessee had misrepresented the facts before the department to derive unintended benefit and in this way the assessee had evaded duty. Hence, this case warranting prosecution has not been taken up for launching prosecution.

2.11.7 Audit observed in Bengaluru II Commissionerate that in six cases, no personal penalty was imposed. Non-imposing of personal penalty in the adjudication orders is one of the reasons cited for non-approval/requesting for re-examination by the sanctioning authority.

We observed that in hardly any instance, the adjudication authority specifically noted whether the case is fit for prosecution or not at the conclusion of the adjudication. It is also pertinent to mention here that the Board's Circular dated 9 August 1990 clearly states that prosecution may be launched even during pendency of the adjudication proceedings if it is apprehended that undue delay would weaken the department's case. However, Audit observed that the department did not initiate the prosecution before finalisation of the adjudication process in any of the cases.

The Ministry's response in respect of the individual cases pointed out is awaited (August 2014).

Recommendation No.6

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 steps accordingly.

Accepting the recommendation, the Ministry replied (August 2014) that a Circular would be issued to reiterate that every adjudicating authority needs to record the findings on prosecution within 30 days of passing the adjudication order. It shall be the responsibility of the Chief Commissioners, reviewing the Orders-in-Original, to ensure that the adjudicating authority has recorded its recommendations on the possibility of prosecution.

2.12 Compounding of prosecution cases

As per para 4 of CBEC Circular dated 27 December 2007, the assessee was to be persuaded to opt for compounding route in greater number of cases. Adequate publicity was also to be given about reduction of compounding amount, in order to make the scheme more popular as to reduce the cases pending in the Court. Further, in order to make best use of compounding of offence scheme, all persons against whom prosecution is initiated or contemplated, should be informed separately in writing, the offer of compounding.

Audit observed that in 19 cases in Bolpur (6), Chandigarh I (4) Delhi I (2), Kolkata I (1), III (1), V (2), and Ludhiana (3) Commissionerates, against whom prosecution was initiated, none was informed separately in writing about the offer of compounding.

The Ministry's response is awaited (August 2014).

2.13 Delay in disposing the applications of compounding

As per Circular dated 30 December 2005, 'all the applications for compounding of offences must be disposed of within 6 months'. Out of six compounding cases seen in Chief Commissionerate's office (Delhi), Audit observed that there was a delay ranging from three to twenty five months in the disposal of application of compounding in four cases.

When we pointed this out, the department stated (February 2014) that rules regarding compounding of offences in central excise matters are enshrined under Central Excise (Compounding of Offences) Rules, 2005 read with Circular No.54/2005-Cus dated 30 December 2005. On the bare perusal of the said Rules, it could be discerned that there is no mandatory stipulation that compounding of offences is to be disposed of within six months from the date of receipt of such applications. However, in the interest of Revenue and the Trade, the referred Circular was issued for necessary guidance and advice to the field formation for the effective implementation of the said Rules. Hence, the said time limit is invariably advisory in nature. Nevertheless, in all the cases, it is evident that the affected parties sought compounding of

offences under the said Rules and the same was provided as per the Rules. The Commissionerate added that the issue raised pertained to the then Competent Authorities, hence the specific reasons cannot be given on their behalf. Since the issues in all the cases relating to compounding of offences attained finality, hence, the issue of time limit is no longer a matter of concern.

However, Audit reiterates its opinion that strict compliance with the departmental circular on compounding of offences is to be ensured. Condoning delay of twenty-five months in disposing an application for compounding by citing the circular's 'advisory' nature defeats the purpose behind issue of such instructions.

The Ministry's response is awaited (August 2014).

2.14 Monitoring by Director General (Inspection)

As per Board's Circular dated 9 August 1990, Director General (Inspection) and Principal Collector, who would be inspecting the offices of Collectors should specially check the points contained in the Circular at the time of conducting inspection.

2.14.1 On scrutiny of available DG (Inspection) Reports, Audit observed that in 24 Commissionerates³ no remarks were found pertaining to prosecution cases which would confirm compliance with the above circular.

2.14.2 In Chandigarh I Commissionerate, it was noticed that four consecutive inspections by DG (Inspection) did not contain any observation in respect of prosecution cases. In Ludhiana and Delhi III Gurgaon Commissionerates, only statistical data was shown in DG (Inspection) report without commenting in detail as per above circular.

Thus, it appears that DG (Inspection) while doing the inspection of Commissionerates needs to give more stress on prosecution related matters during its field Inspections.

The Ministry responded vide reply dated 4 August 2014 that DG (Inspection) is doing the needful.

However, based on Audit findings, the recommendation is reiterated.

Recommendation No. 7

³ Ahmedabad I, Bengaluru II, Bhubaeshwar I, Bolpur, Calicut, Chennai IV, Cochin, Ghaziabad, Hyderabad I, Jaipur I, II Jamshedpur, Kolkatta I, II, Mangalore, Patna, Pondicherry, Raipur, Rajkot, Ranchi, Surat I, II, Trivandrum and Tirunelveli

DGCEI may ensure that reasons for pendency and non-compliance of pending prosecution cases are looked into during field Inspections apart from recording of statistical details.

2.15 Prayer to the Court to invoke Section 9B

Section 9B of the Central Excise Act, 1944 grants power to publish name, place of business etc. of person convicted under the Act by a Court of Law. As per para 3 (vii) of Circular dated 9 August 1990 in all cases, the department, should make a prayer to the Court to invoke this Section in respect of all persons who are convicted under the Act.

In Chennai IV Commissionerate, conviction was ordered in a prosecution case. Details regarding invocation of 9B provision is not available in the relevant prosecution file. When we pointed this out, the department replied (April 2014) that the omission is noted for future guidance.

In Tirunelveli Commissionerate, conviction was ordered in four cases. Details regarding invocation of Section 9B provision is not available in the file.

The Ministry's response in respect of the individual cases pointed out is awaited (August 2014).

2.16 Identification of habitual offenders

As per para 2 (iii) of Circular dated 9 August 1990 in the case of habitual offenders, the total amount of duty involved in various offences may be taken into account while deciding whether prosecution is called for. Moreover, if there is evidence to show that the person or the company has been systematically engaged in evasion over a period of time and evidence to prove malafide is available, prosecution should be considered irrespective of the monetary limit.

We enquired from the department concerning the methodology adopted to identify habitual offenders. Hyderabad I, II and Surat I Commissionerates intimated (January-March 2014) that no separate exercise/mechanism exists in the department. Bengaluru II and Kolhapur Commissionerates stated (January and February 2014) that there were no habitual offenders under their jurisdiction. The reply is silent regarding the method adopted for determining whether an offender fell under the category of habitual offender or not. Ahmedabad I, Rajkot and Surat II Commissionerates replied (between December 2013 and February 2014) that the offence cases were being booked by the Preventive Wing of the department on the basis of intelligence gathered by them. Other than this, the department had carried out no other exercise. Jaipur I Commissionerate has replied that while investigating cases,

the fact regarding habitual offender is also looked into and incorporated in the investigation report. Mangalore Commissionerate replied that the habitual offenders were identified based on the details available in the Offence Register (335J) maintained in the Preventive Section/SIV cell. Chennai II Commissionerate stated (January 2014) that prosecution is not initiated on habitual offenders, but only on those who indulge in duty evasion of ` 25 lakh and more. Chennai IV Commissionerate stated (February 2014) that identification of the habitual offenders is done while passing the orders in Adjudication based of the findings and previous offences, if any. Mumbai I ST Commissionerate stated (March 2014) that each case of evasion is separately considered at the time of enquiry. Eighteen Commissionerates⁴ have not responded to audit query.

From the above it is clear that Commissionerates are not following any uniform method to identify the habitual offenders due to absence of specific directions from the Board resulting in a probability of escaping prosecution by the habitual offender.

The Ministry's response in respect of the individual cases pointed out is awaited (August 2014).

Recommendation No.8

Board may ensure habitual offenders do not escape prosecution owing to inadequacies in monitoring by departmental authorities.

The Ministry informed (August 2014) that DG (Inspection) would incorporate the requirement in the MIS Report.

2.17 Maintenance and updating of Prosecution register

As per para 3(viii) of Circular dated 9 August 1990, a Prosecution Register is required to be maintained in the prescribed format in the Prosecution Cell of the Commissionerate Headquarters.

We looked into the aspect of record maintenance as regards the monitoring of prosecution cases. Ten Commissionerates⁵ informed us that they are not maintaining the prosecution register. Thirty Five Commissionerates informed that they are maintaining prosecution register. On scrutiny, Audit noticed

⁴ Bengaluru ST, Bhubaneswar I, II, Calicut, Cochin, Guwahati, Jaipur I, Kolkata I, II, III, V, Kolkata ST, Mumbai III, Raigad, Pondicherry, Thane II, Trivandrum and Tirunelveli

⁵ Chandigarh I, Cochin, Delhi III, Guwahati, Kolkata I, II, V, Kolkata ST, Rajkot and Ranchi

that in 20 Commissionerates,⁶ the register was not maintained in the prescribed format. Columns such as date of detection, period of evasion, date of sanction of prosecution, date of filing of complaint, date of judgment etc. were not filled up in the register. Information concerning maintenance of the Register by Bengaluru ST Commissionerate is awaited.

In Cochin Commissionerate prosecution cases are shown in separate folios in the Register for Court cases/Revenue Register maintained in the Legal Section. On verification of the register, Audit observed that in the case of prosecution against a Director of M/s. Janso Soft Drinks (P) Ltd, the demand created was shown as ` 2.04 lakh instead of the actual demand of ` 20.40 lakh.

When we pointed this out (January 2014), the department intimated (January 2014) rectification and stated that the Legal Section attends to all court cases including prosecution cases in the absence of a distinct Prosecution Cell.

The Ministry's response in respect of the individual cases pointed out is awaited (August 2014).

Audit recommended that Board may instruct its field formations to maintain the Prosecution Register in the prescribed format as mentioned in the Circular dated 9 August 1990.

Accepting the recommendation, the Ministry informed (August 2014) that directions would be given that Commissioners should periodically inspect the Prosecution Register.

2.18 Withdrawal of prosecution

As per Board's Circular dated 4 April 1994, provided that where a decision has been taken by the concerned Principal Collector to prosecute an entity or a corporate body but the complaint has not been filed in Court and in the interim period facts come to notice of the Principal Collector which are against initiating prosecution, in such cases Principal Collector may recommend to the Board for considering the withdrawal of prosecution. In cases where a complaint has already been filed in the Court, it will be upto the Court to decide whether or not to pursue prosecution in terms of Sections 257 and 321 of Code of Criminal Procedure, 1973. If the order for withdrawal has been given by a Court, the prosecution can be withdrawn by the Assistant Collector after getting a formal order from the Principal

⁶ Bhubaneswar I, Bolpur, Calicut, Chennai IV, Delhi I, Delhi ST, Ghaziabad, Hyderabad I, Jaipur I, II, Jamshedpur, Kolkata III, Lucknow, Ludhiana, Mangalore, Meerut II, Mumbai III, Patna, Trivandrum and Tirunelveli

Collector. Section 321 in the Code of Criminal Procedure, 1973 provides for withdrawal from prosecution. The Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he was being tried.

2.18.1 Audit scrutiny of a case in Meerut II Commissionerate revealed that the complaint was filed in August 1981 before the Court of CJM, Rampur. The case was transferred to the Court of CJM, Allahabad in 1983. AC, Rampur informed the Addl. Commissioner, Meerut in May 1996 that the case had been consigned by the Court. The Commissioner, Meerut had also directed to consider the case for withdrawal.

Audit observed that the case is pending for the last 18 years, hence adequacy of action taken to satisfy the court to permit withdrawal needs to be examined.

2.18.2 Audit scrutiny revealed that in respect of M/s. International Computer Ribbon Corporation, in Chennai IV Commissionerate, SCN was initially adjudicated on 18 January 1994 confirming a duty of ` 46.93 lakh and penalty of ` 7.00 lakh. CEGAT in its order dated 10 November 1994 remanded the case back for de novo adjudication directing to address the question of suppression of facts. Accordingly, the Commissioner passed an order dated 31 October 1997 confirming the duty and imposing penalty of ` six lakh. Once again on appeal by the assessee, the CEGAT in its order dated 5 May 1998, again remanded the case back for de novo adjudication on the ground that the original remand order dated 10 November 1994 had not been complied with and that the order was a non-speaking order and further directed that the Commissioner should disclose the evidence on which the department is proceeding against the assessee.

In the second de novo adjudication dated 29 August 2001, the Commissioner confirmed demand of ` 35.92 lakh and imposed penalty of ` five lakh. On further appeal filed by the assessee against OIO dated 29 August 2001 the CESTAT in its final order dated 2 December 2003 allowed party's appeal and set aside the OIO dated 29 August 2001. However, on request of Commissioner's letter dated 13 February 2007, the SPP was of opinion that the above case was not maintainable.

Audit observed that the decision to withdraw prosecution proceedings could have been taken as early as May 1998.

2.18.3 In Ludhiana Commissionerate, it was noticed that two prosecution cases viz., M/s. Ludhiana Steel Ltd., and M/s. Verka Rubber Corporation were pending for periods ranging between 20 and 22 years in Courts of Law involving meagre amounts of ` 6.55 lakh and ` 4.50 lakh respectively. Audit opines that the cases may be reviewed and if found fit for withdrawal, the department should initiate action to satisfy court in this respect.

When we pointed this out, the department stated (March 2014) that Jurisdictional Deputy/Assistant Commissioner had been advised in writing for compliance.

From the above cases it appears that the department is not reviewing the prosecution cases for withdrawal as per Board's Circular dated 4 April 1994.

When Audit pointed out the need for review of prosecution cases periodically to consider possibility of withdrawal in long pending cases, the Ministry replied (August 2014) that Chief Commissioners would be asked to take necessary action in terms of Board's Circular dated 4 April 1994.

The Ministry's response in respect of the individual cases pointed out is awaited (August 2014).

2.19 Miscellaneous issues

2.19.1 Training

As per para 5 of Board's Circular dated 9 August 1990, Director General of Training was asked to organise training courses on prosecution and to incorporate services of lectures in the courses organised for preventive and anti-evasion office. It was also requested that Commissioners should judiciously sponsor officers for these courses.

We enquired from the 46 selected Commissionerates the details of training courses organised during the years 2009-10 to 2012-13 in relation to handling prosecution cases. Thirty seven⁷ Commissionerates informed that no training course was organised during the years 2009-10 to 2012-13. Bengaluru ST, Chennai II and Pondicherry Commissionerates did not respond to the audit query. Aurangabad, Mumbai I ST, and Tirunelveli Commissionerate intimated that one training was organised during the year 2012-13 in which 2, 40 and 2 people were trained respectively. However, none of the persons trained is posted in the Prosecution Cell. During the period 2009-10 to 2012-13, 8

⁷Bengaluru II, Bhopal, Bhubaneswar I, Bhubaneswar II, Bolpur, Calicut, Chandigarh I, Chennai III, 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, Meerut II, Mumbai III, Patna, Raigad, Raipur, Rajkot, Ranchi, Thane II and Trivandrum

training courses were held in Ahmedabad I, Surat I and II Commissionerates, in which 23 people were trained. Only 5 of these persons were posted in the Prosecution Cell. In Mangalore Commissionerate, only one training was held during 2011 where one person was trained. The only trained person was not posted in the prosecution cell.

2.19.2 Prosecution Cell

Audit observed that there was no Prosecution Cell in the seven⁸ Commissionerates audited or in DGCEI, Kolkata Zonal Unit. In all these Commissionerates, prosecution cases (15 cases) were dealt by the Headquarters Law Branch of the Commissionerate. Audit also observed that no specific Prosecution Registers were maintained for the prosecution cases. Cases were recorded in general registers wherein all the required particulars were not being captured.

Recommendation No.9

The Board should ensure formation of Prosecution Cell in every Commissionerate to deal with matters relating to arrests and prosecution. This would ensure proper attention to every prosecution case, which could enable speeding up of prosecution cases.

The Ministry replied (August 2014) that instructions on formation of Prosecution Cell within the Commissionerate would be reiterated.

2.19.3 Lack of guidelines for monitoring of prosecution cases by DGCEI

As per para 2(viii) & (ix) of Board's Circular dated 9 August 1990, prosecution should normally be launched immediately after adjudication has been completed. In respect of Directorate of Central Excise Intelligence, the appropriate authority for approval of prosecution is Director General of Central Excise Intelligence (DGCEI).

It was noticed that no specific directions were available for monitoring of prosecution cases and co-ordinating by the DGCEI with the respective jurisdictional Commissionerates. Under the existing procedure with regard to prosecution followed by the DGCEI, we observed that an investigation report is prepared at regional/zonal office on fit cases and submitted to the DGCEI for approval. On approval by DGCEI, the zonal offices inform the respective Commissioners to initiate the prosecution proceedings. A test check of scrutiny of the files in the Mumbai Zonal Unit of the DGCEI revealed that

⁸ Bolpur, Guwahati, Kolkata I, II, III, V and Kolkata ST

DGCEI did not have any further information as to the up-to-date status of the cases. We observed as follows:

- DGCEI was not monitoring the prosecution cases approved by it. The respective Commissionerates too did not inform DGCEI on the status of such prosecution cases.
- DGCEI was not aware of the launching of prosecution or otherwise in all those cases approved by it. Details such as the opening and closing balances of the prosecution cases, the cases disposed, outstanding cases for the period under Audit were not available with DGCEI.
- DGCEI did not even have the confirmation from individual Commissionerates as to the receipt of the approvals it gave to commence prosecution.

When we pointed this out, Mumbai Zonal Unit of DGCEI stated (May 2014) that they are periodically monitoring the cases till filing of the complaint by the Jurisdictional Commissionerates. Further, it was stated that after filing of the prosecution case, it is the duty of the jurisdictional Commissionerates to monitor the cases.

The reply of the department is not tenable as no record of such periodical monitoring was available either on the files or on the register maintained at Mumbai Zonal Unit. Information only upto sending of the approval for prosecution to jurisdictional Commissionerates was available. In a few instances, the department had called for status of the prosecution cases from jurisdictional Commissionerates on the basis of audit query and obtained the same.

Recommendation No.10

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.

The Ministry replied (August 2014) that the need for detailed guidelines on sanction and monitoring of the prosecution would be considered after the receipt of final Audit Report.

2.19.4 Improper/poor maintenance of records

2.19.4.1 In Ludhiana Commissionerate, DG (Inspection)'s Report for the period 2009-10 identified 76 ongoing prosecution cases as on 30 November 2010. However, a list of only 35 prosecution cases were produced to Audit. The MTR of Delhi III Gurgaon Commissionerate, showed Nil cases as pending in March 2013. The Commissionerate intimated (September 2013) that one

prosecution case was pending and DG (Inspection)'s report for the period 2009-10 reported nine prosecution cases as outstanding. The various figures provided to Audit need reconciliation.

When we pointed this out, the Ludhiana Commissionerate stated (March 2014) that prosecution cases were being reconciled.

2.19.4.2 The Chief Commissioner's office (Delhi Zone) and Directorate General of Central Excise Intelligence (Delhi Zone) intimated that there were 28 prosecution cases as on 31 March 2013. However, Commissionerate of Central Excise Delhi I, stated that there were only 21 prosecution cases as on 31 March 2013. Further, only 18 Prosecution files were produced to Audit for scrutiny. From the scrutiny of those 18 files, we observed as follows:

- The prosecution file relating to M/s. Om Fragrances, M/s. Pioneer Soap and M/s. Vishwakarma Hydraulic did not contain the investigation report, the approval of Chief Commissioner to initiate prosecution and the filing of complaint in court.
- Three cases viz., (1) M/s. Sunrise Food Products, (2) M/s. Supersign Cable and (3) M/s. Om Fragrances were shown as 'closed' in the details of cases provided by the Commissionerate. These files did not contain details of final orders of the court or details as to why the cases were closed.
- Six cases viz., (1) M/s. Munjal Plywood Ind. Pvt. Ltd., (2) M/s. Elite Cable Inds, Delhi & Others, (3) M/s. Ashbee Systems P. Ltd., (4) M/s. Tirupati Metal Works, (5) M/s. J.V.Ind.Pvt. Ltd., and (6) M/s. Coach Classic in which prosecution were sanctioned by Chief Commissioner were neither entered in prosecution register nor produced to Audit. The status of these cases could not be verified.
- Three cases viz., (1) M/s. Jaswant Rubber, (2) M/s. Pymen Cable and (3) M/s. Sharp Menthol were sent by Directorate General of Central Excise Intelligence (DZU) to Commissionerate of Central Excise, Delhi I for filing complaint in court but details of these cases were neither entered in prosecution register nor produced to Audit.

When we pointed this out in February 2014, DGCEI (DZU) stated (March 2014) that no complaints have been filed in these cases till date. However, the Commissioner, Central Excise, Delhi I is still to reply.

2.19.4.3 In Raipur Commissionerate it was noticed that the actual number of prosecution cases as on 31 March 2013 were 12. However, in the MTR, it was shown as eight as on 31 March 2013. Thus, there was a difference of four cases between the two figures for the same period.

When we pointed this out, the department stated (February 2014) that as per the records, there were 11 prosecution cases pending excluding one case which had been decided by the court in 2005. The other cases are dealt by different sections and would be incorporated in the MTR.

2.19.4.4 Scrutiny of 'Monthly Anti-Evasion Performance Report' for the period 2010-11 to 2012-13 related to prosecution cases in Delhi I Commissionerate revealed that the Commissionerate was reporting nil information in respect of prosecution sanctioned/number of persons prosecuted. However, as per the information Audit received from the Commissionerates, Chief Commissioner (Delhi Zone) had sanctioned prosecution in 12 cases of Central Excise during the period 2010-11 to 2012-13.

The reply from Commissionerate of Central Excise, Delhi I is awaited (August 2014).

2.19.4.5 Test check of the prosecution files revealed that in Mumbai III Commissionerate, in seven cases the original files remained untraceable and the case files were reconstructed. The reconstructed files were examined for launching prosecution. It was seen that in many cases, original copies of SCN, OIO, investigation report for prosecution by Assistant Commissioner, approval of Chief-Commissioner for launching prosecution, date of filing prosecution case, correspondence relating to hearing of cases are not found in the files. The documents which were available were also found to be only photocopies. Audit was unable to verify if all procedures were followed in these cases.

When we informed this, the department stated that many cases were more than 20-25 years old. During the said period, the jurisdiction of the units had changed many times and Commissionerates had also changed. Due to this, the originals were available in the Court, while the officers attending Court and the office have retained copies thereof. Therefore, the files were reconstructed with photocopies. All the prosecution cases are, however, being pursued and they are heard regularly in the respective courts.

Audit observes that poor record management of this sensitive area may hamper department's efforts for ensuring a conviction.

The Ministry's reply is awaited (August 2014).

2.19.5 Offence registers not updated

As per Board's letter dated 27 February 2009, proper maintenance of 335-J offence register is important for monitoring the progress of a case right from the time it is booked. The register should be properly maintained and

updated regularly from range offices to Commissionerate. Every case must contain complete details such as SCN No., OIO No., the appeal, recovery amount, prosecution details etc. Further, the Assistant/Deputy Commissioners of the Division and Headquarters Preventive/Anti Evasion wing should verify the proper maintenance of the register on a monthly basis. During the inspection of a formation, the inspecting office should verify the maintenance of the register and the findings should be given in the inspection report.

In Mumbai III and Raigad Commissionerates, we noticed that important details relevant to a case were missing in the offence register (335J). In some cases, only the names of the individuals and company involved and a brief of the subject were stated and no other details were available. In addition, there was no evidence of any periodical verification of the register.

In reply, Mumbai III Commissionerate stated that on booking of the case, the preliminary details were entered and subsequently as the investigation progresses, further details are entered. On attaining finality in investigation, other details are also entered.

However, Audit observed that even basic details including date of detection, nature of offence etc were not entered in the register.

The Ministry's reply is awaited (August 2014).

2.20 Conclusion

The findings of the performance audit revealed that prosecution as a mechanism envisaged, *inter alia*, to deter potential offenders has failed to achieve the purpose intended. Long delays of various stages lead to lowered chances of securing conviction. Availability of MIS on prosecution cases notwithstanding, necessary attention and pursuance thereof was lacking. Board's instructions also were breached in many cases. Board not only needs to establish corrective procedures but also to ensure vigorous implementation. In response to the recommendations made, the Board has acknowledged the need to reiterate its instructions for better compliance. Further, Board had agreed to direct the Commissioners/Chief Commissioners to periodically monitor and improve effectiveness to make prosecution cases more effective.

New Delhi



(ANIM CHERIAN)

Dated: 3 November 2014

Principal Director (Service Tax)

Countersigned



New Delhi

(SHASHI KANT SHARMA)

Dated: 3 November 2014

Comptroller and Auditor General of India