

INDIRECT TAXES UPDATE – 175

CUSTOMS

Guidelines for launching of prosecution in relation to offences punishable under Customs Act, 1962

Presently, prosecution guidelines in relation to offences punishable under Customs Act, 1962 have been provided vide [Circular No. 27/2015-Customs dated 23.10.2015](#) (further amended vide Circular No. 46/2016-Customs dated 04.10.2016). However, it has been observed that despite the guidelines launching of prosecution / completion of prosecution proceedings gets delayed in several cases which has also been pointed out by the Comptroller & Auditor General of India in its report recently.

One of the factors leading to delays in launching of prosecution is lack of clarity regarding the role of Directorate General of Revenue Intelligence (DGRI) vis-à-vis Customs field formations as to who should submit the investigation report and who should launch prosecution. Accordingly, for the sake of clearly defining the role of DGRI vis-à-vis Customs field formations so that any delay on this account may be prevented, Central Government vide [Circular No. 07/2017-Customs, Dated: March 6, 2017](#) has revised the existing prosecution guidelines by substituting the following paras:

“7.1 Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings particularly in cases of technical nature or where interpretation of law is involved. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher as the case has to be established beyond reasonable doubt whereas the standard of proof in adjudication proceedings is decided on the basis of preponderance of probability. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the test of being reasonable doubt for recommending & sanctioning prosecution. Decision should be taken on case- to- case basis considering various factors, such as, gravity of offence, quantum of duty evaded and the nature as well as quality of evidence collected.

7.2 It is reiterated that in order to avoid delays, the adjudicating authority should indicate, at the time of passing the adjudication order itself (on file and not in the adjudication order) as to whether he considers the case fit for prosecution, so that it could be further processed for launching prosecution. Where at the time of adjudication proceedings, no view has been taken on prosecution by the adjudicating authority, the adjudication section shall resubmit the file within 15 days from the day of issue of adjudication order to the adjudicating authority/Commissioner to take a view regarding prosecution. Where the prosecution is proposed before the adjudication of the case, Commissioner /Pr. Commr. or ADGRI / Pr. ADGRI shall record the reason for the same and the adjudicating authority shall be informed of the decision so that there is no need for him to examine the case subsequently from the perspective of prosecution.

*7.3 In respect of cases investigated by DGRI, the adjudicating authority would intimate the decision taken regarding fitness of the case for prosecution to the Principal Additional Director General/ Additional Director General of the Zonal Unit or Headquarters concerned, where the case was investigated and /or show cause notice issued. The respective officer of DGRI concerned shall prepare an investigation report for the purpose of launching prosecution, within one month of the date of receipt of the decision of the adjudicating authority and would send the same to the Director General, DGRI for taking decision on sanction of prosecution. The format of investigation report is annexed as **Annexure-I** to this Circular. The DGRI / Pr. DGRI should ensure that a decision about launching of prosecution or otherwise, is taken after careful analysis of evidence available on record and communicated to the ADGRI / Pr. ADGRI concerned within a month of the receipt of the proposal.*

*7.4 In respect of cases not investigated by DGRI, where the Principal Commissioner/Commissioner who has adjudicated the case is satisfied that prosecution should be launched, an investigation report for the purpose of launching prosecution should be carefully prepared within one month of the date of issuance of the adjudication order. Investigation report should be signed by an Assistant/Deputy Commissioner, endorsed by the jurisdictional Principal Commissioner/Commissioner and sent to the Principal Chief/ Chief Commissioner for taking a decision on sanction for launching prosecution. The format of investigation report is annexed as **Annexure-I** to this circular. The Chief Commissioner/Principal CC should ensure that a decision about launching of prosecution or otherwise, is taken after careful analysis of evidence available on record and communicated to the Commissioner / Principal CC within a month of the receipt of the proposal.*

7.5 Once the sanction for prosecution has been obtained, criminal complaint in the court of law should be filed as early as possible by an officer not below the rank of Superintendent of the jurisdictional Commissionerate authorized by the Commissioner.

7.6 It is observed that delays in the Court proceedings occur due to the non-availability of records required to be produced before the Magistrate. As a matter of practice, whenever a case is taken up for seeking the approval for launching prosecution, an officer should be nominated/designated, who 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. Such exhibits should be kept in safe custody. Where a complaint has not been filed even after a lapse of three months from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of Chief Commissioner/Principal CC or DGRI / Pr. DGRI by the Commissioner /Pr. Commr. or ADGRI / Pr. ADGRI, as the case may be, who are responsible in the case for ensuring the timely filing of the complaint.

[Circular No. 07/2017-Customs, Dated: March 6, 2017]

***Comment:** To avoid undue delays in the launching of prosecution or completion of prosecution proceedings, a systematic procedure has been prescribed.*

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