

**Circular No 201/11/2016-Service Tax**  
**F.No. 137/47/2013-Service Tax**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Excise & Customs**  
**Service Tax Wing**  
\*\*\*

New Delhi, the 30<sup>th</sup> September, 2016

To  
All Principal Chief Commissioners/ Chief Commissioners of Central  
Excise/Service Tax  
Principal Directors General/ Directors General of Goods & Service  
Tax/Systems/Central Excise Intelligence/ Audit/Tax Payer Services  
Chief Commissioner AR CESTAT  
All Principal Commissioners/Commissioners of Central Excise/Service Tax  
All Principal Additional Directors General/ Additional Directors General Audit

Madam/Sir,

**Subject: Guidelines for arrest in relation to offences punishable under the  
Finance Act, 1994 and Central Excise Act, 1944**

I am directed to draw your attention to the fact that the arrest provisions in Service Tax were introduced with effect from 10.05.2013 vide sub-sections (J) and (K) of section 103 of the Finance Act, 2013 which introduced sections 90 and 91 in the Finance Act, 1994 and also amended section 89 of the Finance Act 1994. Vide sections 155, 156 and 157 of the Finance Act 2016, with effect from 14.05.2016, sections 89, 90 and 91 of the Finance Act, 1994 have been amended. As a consequence of these amendments, the power of arrest in Service Tax is available only if a person collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond the period of six months from the date on which such payment becomes due and the amount exceeds rupees two crore.

2.0 Vide paragraph 2 of Board Circular F.No. 137/47/2013-Service Tax dated 17.09.2013 certain conditions precedent to carrying out arrests were indicated. These were:

2.1 Careful exercise of this power since arrest impinges on the personal liberty of an individual.

2.2 The reason to believe that a person has committed the specified offence which is rendering the person liable for arrest must be based on credible material which will stand judicial scrutiny.

2.3 The relevant factors before deciding to arrest a person must be, apart from fulfillment of the legal requirements, the need to ensure proper investigation and prevention of the possibility of tampering with evidence or intimidating or influencing witnesses.

3.0 In the context of the legislative amendments vide the Finance Act 2016 and the single offence for which the power of arrest exists, it is necessary to again emphasize and indicate the factors which must invariably be kept in mind before arresting a person:

#### 4.0 **Conditions precedent- Legal**

4.1. At the outset there must be clear and unambiguous notings in the file, bringing out how all the ingredients of the offence have been established. The notings must specifically refer to evidence relating to-

4.1.1 **Amount collected as service tax:** Collection of an amount as service tax should be clear and self-evident from the invoices, bills, contracts, etc. An amount should be clearly indicated as service tax. The copies of sample invoices /bills, contracts, etc. which cover the period being investigated should be in the file.

4.1.2 **Amount should exceed Rs 2 crore.**

4.1.3 **Failure to pay the amount so collected to the credit of the Central Government:** The ST3 return filed by the assessee for the relevant period, showing the self-assessed value of taxable services and service tax paid should be available in file. Where no such return has been filed, an observation to this effect should be made since this will make the departmental case stronger.

4.1.4 **Such a failure should be beyond the period of six months from the date on which such payment becomes due:** Fulfillment of the condition relating to the time period must be verified carefully, and a month wise abstract of the invoice numbers, due date of payment of service tax and date when the six month period was completed must be kept ready.

4.2 The suggestions in the preceding paragraph are intended at bringing uniformity in the approach to such matters and ensuring that evidence relating to the alleged offence is readily available for perusal by a judicial body, when necessitated.

#### 5.0 **Conditions precedent- factual**

5.1 Even if all the legal conditions precedent mentioned in paragraph 4.1 to 4.2 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner must then determine if the answer to the following questions is in the affirmative

5.1.1 Is the alleged offender likely to hamper the course of further investigation by his unrestricted movement?

5.1.2 Is the alleged offender likely to tamper with evidence or intimidate or influence witnesses?

5.2 If the answer to both the questions is yes, then the decision to arrest can be made.

5.3 If the alleged offender is assisting in the investigation and has deposited at least half of the evaded tax, then the need to arrest may not arise.


6.0 The Guidelines issued vide Board Circular F.No. 137/47/2013-Service Tax dated 17.09.2013 may be referred to for the procedure for arrest, post-arrest formalities and the reporting system.

7.1. It has been decided to revise the monetary limits for arrests and prosecution in Central Excise to maintain uniformity of practice in Central Excise and Service Tax. It is directed that henceforth arrest and prosecution of a person in relation to offences specified under clause (a) to (d) of sub-section (1) of section 9 of the Central Excise Act, 1944 may be considered only in cases where evasion of Central Excise duty or misuse of CENVAT Credit is equal to or more than rupees two crore. Central Excise Circular No. 974/08/2013-CX dated 17.09.2013 and 1009/16/2015-CX dated 23.10.2015 stand amended accordingly. Circular No. 1010/17/2015-CX dated 23.10.2015 is rescinded in view of the revision of monetary limits prescribed by this circular. It is again reiterated that arrest and prosecution should not be resorted to in cases of technical nature i.e. where the additional demand of duty/tax is based totally on a difference of opinion regarding interpretation of law.

7.2 Transitional provisions as prescribed in para 11 of the Circular No. 1009/16/2015-CX dated 23.10.2015 shall apply mutatis-mutandis i.e. all cases where sanction for prosecution is examined and accorded after the issue of this circular, shall be dealt in accordance with the provisions of this circular, irrespective of the date of the offence. Cases where prosecution was sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority in light of the enhanced monetary limit and sanction withdrawn for cases where evasion of Central Excise duty or misuse of CENVAT Credit is below the revised monetary limit of rupees two crore.

8.0 It is emphasized once again that since an arrest impinges on the personal liberty of an individual, this power should be exercised with great responsibility and caution and only after a careful examination of the legal and factual aspects indicated in the preceding paragraphs.

Yours faithfully

  
(Sreeparvathy S.L.)  
Officer on Special Duty  
Service Tax Wing  
Phone :011-23095438  
[sreeparvathy.sl@gov.in](mailto:sreeparvathy.sl@gov.in)