

Guidelines for arrest and bail in relation to offences punishable under the Finance Act, 1994 - Dated 17-9-2013 - Service Tax

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Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs

Service Tax Wing

New Delhi, the 17th September, 2013

To,

All Chief Commissioners of Central Excise

All Chief Commissioners of Customs and Central Excise

All Directors General

All Commissioners of Service Tax

All Commissioners of Central Excise

Subject: Guidelines for arrest and bail in relation to offences punishable under the Finance Act, 1994

Section 103 (K) of the Finance Act, 2013 has introduced Sections 90 & 91 in the Finance Act, 1994, with effect from 10th May, 2013. In terms of section 90 of the Finance Act, 1994, as amended, offences under section 89(1) (ii) shall be cognizable and all other offences shall be non-cognizable and bailable. In terms of section 91(1) read with section 89(1) (i) and (ii) of the Finance Act, 1994, as amended, the power to arrest has been introduced in cases involving evasion of service tax covered under section 89(1) (i) and (ii) of the Finance Act, 1994, as amended and the amount of service tax evaded exceeds rupees fifty lakh. In this context, the following points may be noted for strict compliance:-

1.2 The following cases are covered under section 89(1) (i):

1.2.1 where a person knowingly evades the payment of service tax, or

1.2.2 avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules, or

1.2.3 maintains false books of accounts or fails to supply any information which he is required to supply or supplies false information, and the amount of service tax involved is more than fifty lakh rupees.

In such cases, the Assistant Commissioner or the Deputy Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in-charge of a police station has, and is subject to, under Section 436 of the Code of Criminal Procedure, 1973(2 of 1974). This is in terms of section 91(3) of the Finance Act, 1994, as amended.

1.3 The following cases are covered under section 89(1) (ii):

1.3.1 where a person has collected any amount exceeding fifty lakh rupees as service tax but fails to pay the amount as collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

In such cases, after following the due procedure of arrest, the arrested person must be produced before the magistrate without unnecessary delay, and definitely within 24 hours. This is in terms of section 91(2) of the Finance Act, 1994, as amended. The magistrate will decide on whether or not to grant bail.

2.0 Conditions precedent

2.1 Since arrest impinges on the personal liberty of an individual, this power must be exercised carefully. The Finance Act, 1994, as amended, has specified categories of offences in respect of which only powers of arrest may be exercised and these offences are covered under clause (i) or clause (ii) of sub-section (1) of section 89 of the Finance Act, 1994. Further, the Finance Act, 1994 has also prescribed value limits of evasion of service tax exceeding Rs. 50 lakh, for exercising the powers of arrest.

2.2 The legal stipulations in the Finance Act, 1994, as amended, contained in section 91 read with section 89 must be strictly adhered to. An officer of Central Excise not below the rank of Superintendent of Central Excise can carry out an arrest on being authorized by the Commissioner of Central Excise. To authorize the arrest the Commissioner should have reason to believe that the person proposed to be arrested has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89. The reason to believe must be based on credible material which will stand judicial scrutiny.

2.3 Apart from fulfilling the legal requirements, the need to ensure proper investigation, prevention of the possibility of tampering with evidence or intimidating or influencing witnesses and large amounts of service tax evaded are relevant factors before deciding to arrest a person.

3.0 Procedure for arrest

3.1 The provisions of the Code of Criminal Procedure 1973 (2 of 1974) relating to arrest and the procedure thereof must be adhered to. It is therefore advised that the Commissioner should ensure that all officers are fully familiar with the provisions of the Code of Criminal Procedure 1973 (2 of 1974).

3.2 There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in D.K Basu vs State of West Bengal reported in 1997(1) SCC 416 (see paragraph 35). The arrest memo should include:

3.2.1 brief facts of the case;

3.2.2 details of the person arrested;

3.2.3 gist of evidence against the person;

3.2.4 relevant section (s) of the Finance Act, 1994 or other laws attracted to the case and to the arrested person;

3.2.5 the grounds of arrest must be explained to the arrested person and this fact noted in the arrest memo;

3.2.6 a nominated person (as per the details provided by arrested person) of the arrested person should be informed immediately and this fact also may be mentioned in the arrest memo;

3.2.7 the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to the person arrested under proper acknowledgment;

3.2.8 a separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event that there are several arrests in a single case.

3.3 Further there are certain modalities that should be complied with at the time of arrest and pursuant to an arrest, which include the following:

3.3.1 A female should be arrested by or in the presence of a woman officer;

3.3.2 Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Governments and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

3.3.3 It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.

4.0 Post arrest formalities

4.1 The procedure is separately outlined for the different categories as listed in section 89(1) (i) and (ii) of the Finance Act, 1994, as amended:

4.1.1 In cases covered under section 89(1) (i), the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also informed on telephone to the nominated person of the person (s) arrested. The arrested person should be also allowed to talk to a nominated person. The conditions will relate to, inter alia, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and security will depend, inter alia, on the amount of tax involved.

4.1.2 If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four (24) hours of arrest. The arrested person may be handed over to the nearest police station for his safe custody, within 24 hours, during the night under a challan, before he is produced before the Court.

4.2 In cases covered under section 89(1) (ii) and only in the event of circumstances preventing the production of the arrested person before a Magistrate without unnecessary delay, the arrested person may be handed over to nearest Police Station for his safe custody, within 24 hours, under a proper challan, and produced before the Magistrate on the next day, and the nominated person of the arrested person may be also informed accordingly.

4.3 Formats of the relevant documentation i.e. the Bail Offer Letter, the Bail Bond and the Challan for handing over to the police, in the Code of Criminal Procedure, 1973. (2 of 1974) may be followed.

4.4 Every Commissionerate should maintain a Bail Register which will have the details of the case, arrested person, bail amount, surety amount. The money/instruments/documents received as surety should be kept in safe custody. The money should be deposited in the treasury. The other instruments/documents should be kept in the custody of a single nominated officer. It should be ensured that the instruments/documents received as surety are kept valid till the bail is discharged.

5.0 Reporting System

5.1 A report on every person arrested should be sent to the jurisdictional Chief Commissioner with a copy to DGCEI (Headquarters) the same day or on the next day.

5.2 Chief Commissioners shall send a report on every arrest to the Zonal Member within 24 hours of the arrest giving such details as prescribed in the monthly report. To maintain an all India record of arrests made in service tax, a monthly report of all persons arrested in the Zone shall be sent by the Chief Commissioner to DGCEI (Headquarters), New Delhi, by the 5th of the succeeding month, in the following format:

Monthly Report on Persons Arrested in a Zone

S.No	Name, designation and age of arrested person	Date of arrest	Commissionerate	Name and Registration Number of Company	Amount of duty evaded	Role in evasion and nature of evidence collected
Total						

Yours faithfully

(Rajeev Yadav)

Director (Service Tax)