

Monetary threshold may be revised to ₹25 crore

CBIC may revise some provisions, keeping lower conviction rate in mind

SHRIMI CHOUDHARY
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As part of its drive against decriminalisation, the Centre is contemplating raising the monetary threshold for initiating prosecution for cognisable and non-bailable offences related to the goods and services tax (GST) to ₹25 crore and above.

At present, if the amount of tax evaded or input tax credit wrongly availed of is ₹5 crore or above, the prison term may be extended to five years.

The Central Board of Indirect Taxes and Customs (CBIC) — an apex body for indirect taxation matters — is learnt to be revising some provisions under Section 132 (deals with prosecution) and Section 162 (deals with compounding of offences), keeping lower conviction rate and changing dynamics of businesses in mind, said a senior official privy to the plan.

The revenue department is of the view that the monetary threshold is lower for serious offences and arrests be made in exceptional cases.

If the amount evaded exceeds ₹2 crore (but not more than ₹5 crore), the jail term could be three years. If tax evaded is more than ₹1 crore (but less than ₹2 crore), the incarceration period is a year.

The department is even considering rationalising the threshold set for arrest in non-cognisable and bailable offences under the GST regime. Sources say it may hike the monetary limit to ₹2 crore with a minimum jail term of a year.

This may also involve tweaks for the purpose of arrest which could be made in the case of serious offences, observed the official.

The revenue department is learnt to have sought inputs from industry stakeholders. They suggested doing away with jail terms in minor tax evasions and settle



REVISITING PROSECUTION PROVISIONS

Three key provisions under GST regime

IF THE AMOUNT EVADED/INPUT TAX CREDIT WRONGLY CLAIMED IS...

▶ **₹5 CR & ABOVE** Five-year extendable jail term, cognisable and non-bailable

▶ **₹1 CRORE** One-year jail term, bailable

▶ **₹2 CRORE & ₹5 CRORE** Three-year jail term, bailable

▶ Revenue department observes lower conviction rate and change in business dynamics warranting change to existing provisions

▶ Seeks inputs from stakeholders to decriminalise current provision for ease of doing business

▶ Could be taken up in upcoming GST Council meeting

▶ May lower compounding fee for small businesses

them through compounding, citing ease of doing business, said another official. They also suggested the monetary threshold for non-bailable offences related to GST be increased to ₹50 crore.

According to people in the know, the department is also revisiting existing compounding provisions and contemplating whether the fee be imposed on the basis of turnover of businesses.

For example, small businesses with a ₹5-10-crore turnover may be asked for a lower fee (15-20 per cent) on total tax involved. Currently, the provision of compounding requires a 50-150 per cent fee.

The relevant changes to the GST law are likely to be placed before the GST Council at its upcoming session.

Once the Council approves, they are expected to be notified during the Budget session.

M S Mani, indirect tax partner, Deloitte, said, "Prosecution should be resorted only in extremely rare situations after establishing mala fide intent. It is essential to curb evasion. It is even more essential to enable businesses to operate without the fear of prosecution and attendant proceedings," he said.

"The increase in threshold limits for prosecution, decriminalisation of certain offences, etc under GST legislation would help in reducing litigation between the tax department and assesses. This is likely to ensure more focused investigation by the tax department in cases involving high-value GST evasion," said Saurabh Agarwal, tax partner, EY.

As part of the ongoing decriminalisation drive, the CBIC on August 17 issued guidelines wherein it clarified how prosecution can be initiated and the procedure to be followed at the time of such initiation by department officials.

These guidelines state that approval for arrest under the GST Act shall be granted for cases wherein clear intent of tax evasion or violation exists.

The notification also stated that approval for arrest should not be granted if tax discrepancy is based on the difference of legal opinion in the interpretation of the law.

So far, the CBIC has made 960 arrests, including of 20 chartered accountants, under the current provision.

RUN-UP TO

BUDGET 2023-24