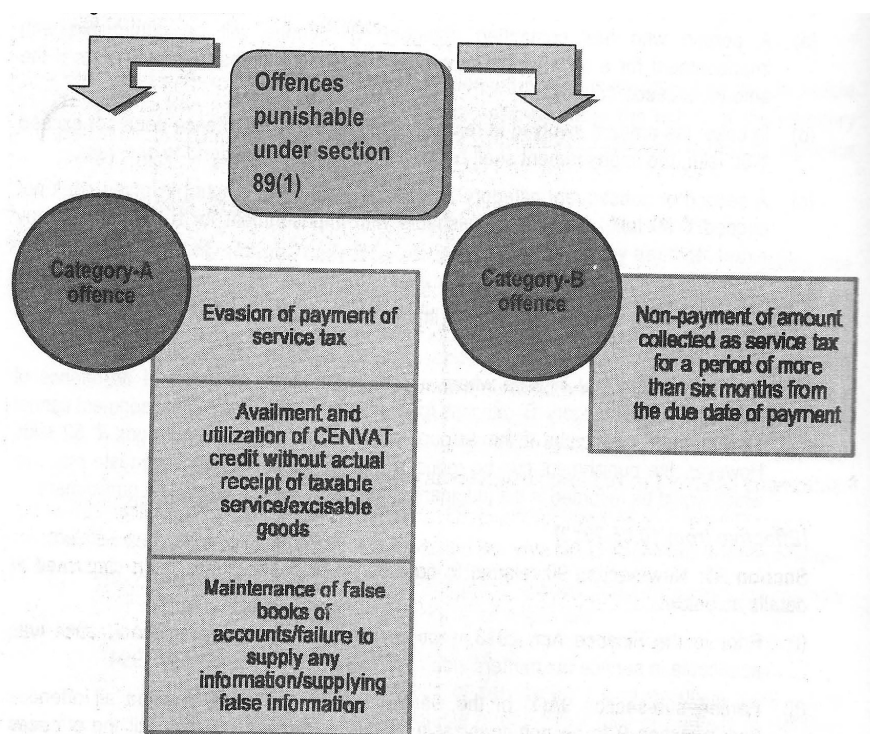


INDIRECT TAX / AMENDMENTS

The amended provisions of section 89 and new section 90 have been depicted by way of diagrams as follows:



Offence Category	If any person is convicted for an offence for [Section 89]				
		Where the amount is	Term of imprisonment		
A	First time		Prior to amendment	After the amendment	
			(i) upto ₹ 50 lakh	Upto 1 year	Upto 1 year
			(ii) more than ₹ 50 lakh	6 months* - 3 years	6 months* - 3 years
	Second & every subsequent offence	The term of imprisonment would be 6 months* - 3 years.		The term of imprisonment may extend to 3 years.	
	B	First time		Prior to amendment	After the amendment
(i) upto ₹ 50 lakh				Upto 1 year	Upto 1 year
(ii) more than ₹ 50 lakh				6 months* - 3 years	6 months* - 7 years
Second & every subsequent time		(i) upto ₹ 50 lakh	6 months* - 3 years	Upto 3 years	
		(ii) more than ₹ 50 lakh	6 months* - 3 years	Upto 7 years	

*Such imprisonment shall be for a term of less than six months if there are **special and adequate reasons** to be recorded in the judgment of the Court.

Non-cognizable and bailable offence [Section 90]

Cognizable offence [Section 90]

INDIRECT TAX / AMENDMENTS

8. Powers of arrest introduced in service tax [New section 91]
Under Central Excise Law, an Inspector or any other Central Excise Officer above his rank is empowered to arrest any person whom he has reason to believe to be liable to punishment. Similar powers have been introduced in the service tax law this year by the Finance Act, 2013.
- (i) **Who can arrest?** - New section 91 provides that the Commissioner of Central Excise by general or special order authorize any officer of Central Excise, not below the rank of Superintendent of Central Excise to arrest a person.
 - (ii) **Who can be arrested?** - A person who has committed any of the offences specified under section 89(1) and the amount involved in the offence exceeds ₹ 50 lakh.
 - (iii) **When can arrest be ordered?** - The Commissioner of Central Excise can order arrest if he has reason to believe that a person has committed the offence mentioned above.
 - (iv) **Manner of arrest** - All arrests have to be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.
 - (v) **Procedure in case of cognizable offence** - In case of cognizable offence, every officer authorised to arrest a person has to inform the arrested person of the grounds of arrest and produce him before a magistrate within 24 hours.
 - (vi) **Procedure in case of non-cognizable and bailable offence** — The Assistant Commissioner Deputy Commissioner is empowered to release an arrested person on bail or otherwise. For this purpose, the Assistant Commissioner/Deputy Commissioner will have same powers and be subject to the same provisions as an officer in charge of a police station is under Code of Criminal Procedure, 1973.

Example

Discuss the prosecution, arrest and bail implications, if any, in respect of the following cases pertaining to the period June, 2013:

- (i) 'A' avails CENVAT credit of ₹ 52 lakh without actual receipt of excisable goods. However, he is yet to utilize the same.
- (ii) 'B' willfully evades payment of service tax of ₹ 55 lakh.
- (iii) 'C' knowingly supplies false information sought by the Central Excise Officer. The amount of service tax involved is ₹ 10 lakh.
- (iv) 'D' collects ₹ 65 lakh as service tax from its clients but deposits only ₹ 5 lakh with the Central Government.
- (v) 'E' collects ₹ 55 lakh as service tax from its clients and deposits ₹ 51 lakh with the Central Government.

Solution:

Person	Offence	Prosecution	Arrest	Bail
'A'	No offence as both availment <u>and</u> utilisation of credit without actual receipt of excisable goods constitutes an offence [Section 89(1)(b)]	NA	NA	NA
'B'	Non-cognizable offence [Section 90(2)]	6 months to 3 years [Section 89(1)(i)]	Arrest can be ordered by Commissioner of Central Excise [Section 91(1)]	Bailable Offence [Section 90(2)]

INDIRECT TAX / AMENDMENTS

‘C’	Non-cognizable offence [Section 90(2)]	Upto 1 year [Section 89(1)(iii)]	No arrest [Section 91(1)]	Bailable Offence [Section 90(2)]
‘D’	Cognizable offence [Section 90(1)]	6 months to 7 years [Section 89(1)(ii)]	Arrest can be ordered by Commissioner of Central Excise without arrest warrant [Section 91(2)]	Non-Bailable/Bailable Offence [Section 90(2)]
‘E’	Non-cognizable offence [Section 90(2)]	Upto 1 year [Section 89(1)(iii)]	No arrest [Section 91(1)]	Bailable Offence [Section 90(2)]

Example

In the above Example, what will be the prosecution implication, if B, D and E are convicted for subsequent offences?

Solution:

Person	Prosecution for subsequent offences
‘B’	Imprisonment upto 3 years [Section 89(2)(a)]
‘D’	Imprisonment upto 7 years [Section 89(2)(b)]
‘E’	Imprisonment upto 3 years [Section 89(2)(a)]

C. CUSTOMES

- No refund and recovery if the amount of customs duty involved is less than ₹ 100 [Section 27(1) and 28(1) amended]
- Proper officer empowered to provisionally attach the property in case of non-payment of customs duty or interest thereon on account of fraud, collusion, suppression of facts etc. as well [Section 28BA(1)]
Section 28BA(1) has been amended so as to enable a proper officer to attach the property belonging to any person on whom notice is served **under sub-section (1) or sub-section (4) of section 28**. It implies that proper officer has now been empowered to provisionally attach the property belonging to a person on whom a SCN has been served for short-levy! non-levy erroneous refund of customs duty or non-payment! part-payment! erroneous refund of any interest payable, **by reasons of collusion or any wilful mis-statement or suppression of facts**.
- CBEC empowered to permit landing of vessels and aircrafts at any place other than customs port or customs airport [Section 29(1)]
- Electronic filing of import/export manifest mandatory except in cases allowed by Commissioner of Customs [Section 30(1) & Section 41(1)]
Section 30(j) and section 41(1) have been amended vide the Finance Act, 2013 to provide for the **mandatory electronic filing** of the import manifest and export manifest respectively. However, in cases where it is not feasible to deliver import/export manifest by presenting them electronically, the Commissioner of Customs may, allow the same to be delivered in any other manner.
- Interest free period for payment of import duty reduced from five days to two days [Section 47(2)]

6. Period of storage without warehousing restricted to 30 days [Section 49])

Erstwhile Position

Earlier, **no time-period** had been specified under section 49 for which imported goods could be stored in a warehouse.

New position

Section 49 has been amended to introduce a time limit of **30 days** for storage of goods in a warehouse in the interest of accountability and early finalization of assessments.

However, the Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time)

7. Export of warehoused goods without payment of import duty allowed on presenting postal export documents also [Section 69(1)(a)]

As per section 69(1)(a) of the Customs Act, 1962, any warehoused goods might be exported to a place outside India without payment of import duty provided a shipping bill or a bill of export had been presented in respect of such goods in the prescribed form.

This section had been amended to allow export of warehoused goods under postal export documents [as referred to in section 82] also.

Note: In the case of goods exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, is deemed to be an entry for export.

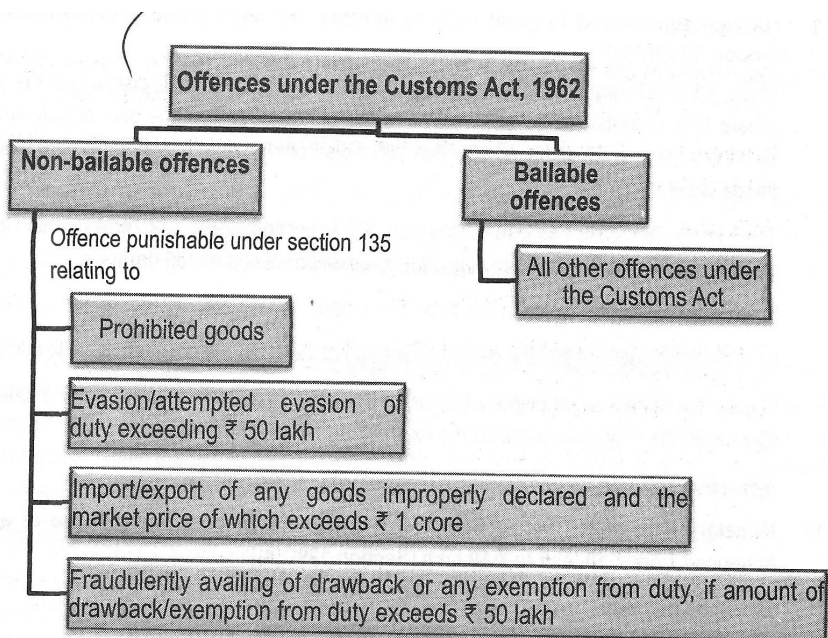
8. Certain specified offences to be non-bailable [Section 104(6)]

Erstwhile position

Earlier, ALL offences under Customs Law were bailable [Section 104(6)].

New position

Finance Act, 2013 has substituted sub-section (6) to section 104 with sub-sections (6) and (7). Now, certain offences have been specified as non-bailable offences. Rest of the offences would be bailable as before.



9. Removal of duty liability on any sample of goods consumed/destroyed during the course of testing/examination [Section 144(3)]

Erstwhile position

Earlier, section 144(3) stipulated that no duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof, **if such duty amounts to ₹ 5 or more.**

New position

The words “if such duty amounts to ₹ 5 or more” have been omitted from the aforesaid section. Consequently, there shall be no duty liability on a sample of goods consumed/destroyed during the course of testing/examination.

10. Change of nomenclature of “customs house agents” to “customs brokers” [Section 146 and section 146A(2)(b)]
11. Person who has committed offence under the Finance Act, 1994 also disqualified to act as authorized representative [Section 146A(4)(b)])

Any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excise Act, 1944, or the Gold (Control) Act, 1968 or the Finance Act, 1994 is disqualified from acting as an authorized representative in customs matters. Hence, **a person convicted under the Finance Act, 1994** has also been disqualified from acting as an authorized representative in customs matters.
