

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
NO.1, WILLIAMS ROAD, CANTONMENT, TRICHY-1.

TRADE NOTICE: 01/2006

DATED: 02.01.2006.

Sub: Communication of Ministry's Notification No. 37/2005 – CE (N.T)
dated 30.12.2005 – Regarding.

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Copy of Ministry's Notification No. 37/2005 - CE (N.T) dated 30.12.2005 is communicated herewith.

The contents of the Trade Notice may be brought to the knowledge of all constituent members of Trade Associations / Chambers of Commerce

(Issued from file C.No.IV/16/2/2006 – C.Ex.Pol.)

//ATTESTED//

Sd./xxx
(V. JAYARAMAN)
JOINT COMMISSIONER (TECH)

SUPERINTENDENT (TECH)
To

As per mailing list II & III.
All Section in Hqrs., Trichy.

Copy of Ministry's Notification No. 37/2005 CE (N.T) Dated: 30.12.2005

In exercise of the powers conferred by clause (id) of sub-section (2) of section 37 read with sub-section (2) of section 9A of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules, namely:

1. Short title and commencement. -
 - (i) These rules may be called the Central Excise (Compounding of Offences) Rules, 2005.
 - (ii) They shall come into force on the date of their publication in the Official Gazette.
2. Definitions.- In these rules , unless the context otherwise requires,
 - (a) "Act" means the Central Excise Act, 1944 (1 of 1944);
"applicant" means any assessee or any other person, but shall not include officers of Central Excise as appointed by Board or Commissioner of Central
 - (b) Excise under Rule 3 of the Central Excise Rules 2002;

- “compounding authority” means the Chief Commissioner of Central Excise,
- (c) having jurisdiction over the place where the offence under the Central Excise Act, 1944, have been or alleged to have been committed;
- (d) “form” means the form appended to these rules;
- “reporting authority” means, the Commissioner of Central Excise, having jurisdiction over the factory/place where the offences under the Act have been or are alleged to have been committed or any other officer as may be authorized
- (e) in this regard by the Chief Commissioner of Central Excise having jurisdiction over the place where such offences under the Act have been or are alleged to have been committed;
- (f) “section” means a section of the Act; and
- (g) words and expressions used in these rules and not defined but defined in the Act shall have the respective meanings assigned to them in the Act.

3. Form and manner of application. – (1) An applicant may, either before or after institution of prosecution, make an application under sub-section 2 of section 9A in the form appended to these rules, to the Compounding authority to compound the offence:

Explanation.- Where an offence under the Act has been committed at more than one place falling under the jurisdiction of more than one compounding authority, then the Chief Commissioner of Central Excise having jurisdiction over such place where the value of goods seized, or the amount of duty evaded or attempted to be evaded is more than the others shall be the competent authority.

4. Procedure on receipt of application under rule 3 - (1) On receipt of an application under rule 3, the compounding authority shall call for a report from the reporting authority with reference to the particulars furnished in the application, or any other information, which may be considered relevant for examination of such application.

(2) Such report shall be furnished by the reporting authority within a period of one month or within such extended period as may be allowed by the compounding authority, from the date of receipt of communication from the compounding authority.

(3) The compounding authority, after taking into account the contents of the said application, may, by order, either allow the application indicating the compounding amount in terms of rule 5 and grant him immunity from prosecution in terms of rule 6 or reject such application:

Provided that application shall not be rejected unless an opportunity has been given to the applicant of being heard and the grounds of such rejection are mentioned in such order.

(4) A copy of every order under sub rule (3) shall be sent to the applicant.

(5) The applicant shall, within a period of thirty days from the date of receipt of order under sub- rule (3) allowing the compounding of offences, pay the compounding amount, as ordered to be paid by the compounding authority and shall furnish the proof of such payment to the compounding authority.

(6) The compounding amount once paid shall not be refunded except in cases where the court rejects grant of immunity from prosecution.

(7) The applicant cannot claim, as of right, that his offence shall be compounded.

5. Fixation of the Compounding amount.- For the purpose of compounding of offences under the various provisions of the Act, the compounding amount shall be as provided herein below,-

| Sl.No. | Offence | Compounding amount |
|---------------|---|---|
| 1 | Offence specified under section 9(1)(a) of the Act | Rupees fifty thousand for the first offence and to be increased by hundred per cent of this amount for each subsequent offence. |
| 2 | Offence specified under section 9(1)(b) of the Act | Upto twenty per cent of market value of goods or Rs. Ten lakhs whichever is higher. |
| 3 | Offence specified under section 9(1)(bb) of the Act | Upto twenty per cent of market value of goods or Rs. Ten lakhs whichever is higher. |
| 4 | Offence specified under section 9(1)(bbb) of the Act | Upto twenty per cent of market value of goods or Rs. Ten lakhs whichever is higher. |
| 5 | Offence specified under section 9(1)(bbbb) of the Act | Upto hundred per cent of such credit. |

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|---|--|---|
| 6 | Offence specified under section 9(1)(c) of the Act | Rupees fifty thousand for the first offence and to be increased by hundred per cent of this amount for each subsequent offence. |
| 7 | Offence specified under section 9(1)(d) of the Act | Upto twenty per cent of market value of goods or Rs. Ten lakhs whichever is higher. |

6. Power of Compounding authority to grant immunity from prosecution. -

The compounding authority, if he is satisfied that any person who has made the application for compounding of offence under these rules has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, grant to such person, subject to such conditions as he may think fit to impose, immunity from prosecution for any offence under the Central Excise Act, 1944 with respect to the case covered by the compounding of offence.

7. Withdrawal of Immunity from Prosecution in certain conditions. -

(1) An immunity granted to a person under rule 6 shall stand withdrawn if such person fails to pay any sum specified in the order of compounding passed by the compounding authority, under sub-rule (3) of rule 4 within the time specified in such order or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of the Central Excise Act, 1944 shall apply as if no such immunity had been granted.

(2) An immunity granted to a person under sub rule (1) above may, at any time, be withdrawn by the Compounding authority, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any particulars, material or had given false evidence, and thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and thereupon the provisions the Central Excise Act, 1944 shall apply as if no such immunity had been granted.

FORM

(see rule 3)

Application for Compounding of Offence

1. Full Name and address of the applicant:
2. Address for communication:
3. (i) Permanent Account Number (PAN):
(ii) Registration No:
4. Commissioner of Central Excise having jurisdiction over the applicant:
5. The violation of provisions of Central Excise Act, 1944, against which prosecution is instituted or contemplated for which application of Compounding:
6. Details of invoices/Adjudication order in relation to the case for compounding:
7. Date of seizure, if any:
8. Brief facts of the case and particulars of the offence(s) charged:
9. Whether Show Cause Notice issued
10. If yes, details of duty demanded
11. Whether Show Cause Notice has been adjudicated
12. If yes, adjudication details
 - (a) Amount of duty confirmed
 - (b) Amount of CENVAT credit to be recovered/denied
 - (c) Fine imposed
 - (d) Penalty imposed
13. Whether this is the first offence under the Central Excise Act, 1944. If not details of previous cases:
14. Whether any proceedings for the same offence contemplated under any other law, if so the details thereof:

Name and Signature of the applicant.

DECLARATION

1. I shall pay the compounding amount, as may be fixed by the compounding authority under sub-rule (3) of Rule 4 of the Central Excise (Compounding of Offences) Rules, 2005.
2. I understand that I cannot claim, as of right that the offence committed by me under the Act should be compounded.

Name and Signature of the applicant.

VERIFICATION

I, ----- the son/daughter/wife of ----- residing at ----- do solemnly declare that I am making this application in my capacity as ----- and I am competent to verify it.

That the contents of this application are true to the best of my knowledge and belief and no information relevant to the facts of the case has been suppressed. The documents accompanying the application are true copies of the originals and the tables showing financial transactions are correct and are duly attested by me.

Verified today the ----- day of (month) ----- (year) at ----- .

Name and Signature of the applicant.

Place:

Date:

[F.No. 267/22/2005-CX-8]

(RAHUL NANGARE)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA