CIRCULAR NO. 54/2005-Cus
30th December, 2005

F. No. 450/67/2003-Cus.IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Subject: Guidelines for compounding of offences under Customs and Central Excise Acts - regarding.

The Central Government has brought into force the Customs (Compounding of Offences) Rules, 2005 and Central Excise (Compounding of Offences) Rules, 2005 with effect from 30th December, 2005, the date of publication of these rules in the official gazettee. Notification No.114/2005 Customs (N.T.) and No. 37/2005-Central Excise (N.T.) both dated 30.12.2005 have been issued in this regard.

2. As you may be aware, the purpose of compounding of offences against payment of compounding amount is to prevent litigation and encourage early settlement of disputes. Considering the wide range of offences listed in the relevant Chapter of the Customs Act/ Central Excise Act, Board has decided to classify these offences as (i) technical offences; and (ii) substantive or non-technical offences for the purpose of compounding. 'Technical offences' are those offences that can be compounded more than once and would be accorded a more liberal treatment. However, 'Substantive or non-technical offence' are offences, where it has been decided not to allow compounding for the second time. For the purpose of compounding, 'Substantive or non-technical offence' would mean offences covered under section 135 and 135A of the Customs Act. Similarly under Central Excise Act this would refer to offences covered under sub-section (1)(a), (1)(b), (1) (bb), (1) (bbb), (1) (bbbb) and (1)(c) of section 9. On the other hand 'Technical offence' would mean offences covered under section 132, 133 and 134 of the Customs Act and section 9(1)(d) of the Central Excise Act. Accordingly compounding for substantive offence shall be allowed only once.

3. It has also been decided by the Board, that considering the serious implications of certain offences mentioned below, these shall not be considered for compounding and any applications received from one or more categories of the following persons should be rejected.

(i) Any person who along with offence under Customs Act, has also committed or has also been accused of committing an offence under any of the following Acts:-

(a) Narcotics Drugs and Psychotropic Substances Act, 1985;
(b) Chemical Weapons Convention, Act, 2000;
(c) Arms Act, 1959

(d) Indian Penal Code

(e) The Wild Life (Protection) Act, 1972

(ii) Any person who is involved in cases of smuggling of goods falling under any of the following categories,-

(a) Special Chemicals, Organisms, Materials, Equipments & Technologies (SCOMET), as specified in Appendix-3 to Schedule 2 of ITC (HS);

(b) Prohibited items for import or export as specified in the ITC (HS) Classifications of Export and Import items, 2004-09 issued under section 3 of the Foreign Trade (Development and Regulation) Act, 1992;

(c) Any other goods or a document, which is likely to affect friendly relations with any foreign state or is derogatory to national prestige.

(iii) Any person who has already exercised the option of compounding of an offence in respect of goods of value exceeding rupees one crore in the past.

(iv) Any person who has been convicted under the Act by an order issued subsequent to the date of publication of the Customs/ Excise (Compounding of Offences) Rules in the official gazettee.

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4. While the Compounding of Offence Rules have been made as simple and unambiguous as possible, it would be worthwhile to clarify a few provisions as follows:

(i) Offence committed by officers of Customs/ Central excise does not merit compounding as it is a matter between the State and its employee. Accordingly the definition of the applicant excludes the departmental officers.

(ii) As the Chief Commissioner has to decide about the eligibility of the applicant and allow compounding in respect of an application filed before him on the basis of certain facts given by the applicant, it is provided for verification of such facts and call for any other facts or information available on record from the reporting officer.

5. The Chief Commissioners have been empowered to compound offences before or after filing of the complaint subject to the above general guidelines. While there would be no difficulty in cases where complaint has not been filed by the department, as regards existing cases pending in the court, the following procedure may be followed. No such application for compounding shall be processed unless the applicant within 30 days of filing such application, files an affidavit before the Court before whom such prosecution is pending undertaking to comply with the provisions of these rules and submit a copy of such affidavit to the compounding authority. On receipt of such affidavit, the compounding authority shall examine the application in accordance with the above guidelines and pass an appropriate order under sub-rule (3) to rule 4. A copy of such order shall also be forwarded to the Court. After payment of compounding amount as per the above order, the reporting authority shall move an application before the said court informing about the compounding of offence and requesting the court to dispose of the case accordingly. If the court accepts the order of

compounding of offence and disposes of the case, then the order of compounding authority becomes final. However, in cases where the Court rejects the request of the department for grant of immunity from prosecution by compounding of offences, then the compounding amount paid by the applicant as per order of the compounding authority shall be refunded to the applicant.

6. In order to make best of use of compounding of offence, assesses at the time of intimation/ initiating action for launching of prosecution should be given an offer of compounding. It may however be clarified that the application for compounding shall be decided on merits and in the absolute discretion of the Chief Commissioner. The cases where the Chief Commissioner is not inclined to accede to applicant's request for compounding as detailed in para 3 above, may be rejected informing the grounds accordingly.

7. Adequate publicity may be given to the Compounding of Offence Rules and these guidelines so that large numbers of cases are compounded resulting in reduction in number of cases pending in the courts. All the applications for compounding of offences must be disposed of within 6 months. The performance of the zone in realisation of compounding amount also may be indicated suitably in the monthly report to the Directorate of Data Management.

8. These Compounding of Offences Rules and guidelines may be brought to the notice of all concerned. In case of any doubt regarding any provision of the guidelines, rules reference may be made to the Board. The receipt of these guidelines may be acknowledged. The guidelines shall be implemented with immediate effect.

Yours faithfully

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