Circular No. 29/2009-Customs

F. No.450/139/2008-Cus.IV (Pt.)

Government of India

Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
North Block, New Delhi

15th October, 2009

To

All Chief Commissioners of Customs / Customs (Prev.).

All Chief Commissioners of Customs & Central Excise.

All Commissioners of Customs / Customs (Prev.).

All Commissioners of Customs (Appeals).

All Commissioners of Customs & Central Excise.

All Commissioners of Customs & Central Excise (Appeals).

Subject: Guidelines for compounding of offences under Customs Act, 1962 – regarding.

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Sir/ Madam,

I am directed to invite your attention to the Board's Circular No. 54/2005-Cus dated 30.12.2005 prescribing the Guidelines for compounding of offences for implementing the provisions of the Customs Act, 1962 and the Customs (Compounding of offences) Rules, 2005.

2. The High Court of Bombay in their Order dated 25.10.2007 passed in W.P. No. 1884 of 2007 held that there is no power conferred to interfere with the statutory power of the Chief Commissioner of Customs for compounding of offences under Section 137(3) of the Customs Act, 1962. Hence, the guidelines issued by the Board, vide Circular No. 54/2005-Cus dated 30.12.2005, classifying offences as 'technical' and 'substantive', allowing substantive offences to be compounded only once and excluding certain cases from the purview of the compounding were held by the Court to be ultravires to Customs Act, 1962 and Rules made thereunder.

3. The matter was examined in the Board for appropriate amendment in the provisions of the Customs Act, 1962 for compounding of offences. Accordingly, Section 137(3) of the Customs Act, 1962 was suitably amended through the Finance (No. 2) Act, 2009 (No. 33 of 2009). Through these amendments, certain categories of cases have been excluded from the purview of compounding such as cases pertaining to:

(a) a person who has already been allowed compounding once in respect of any offence under section 135 and 135A of the Customs Act, 1962

(b) a person who has been accused of committing an offence under Customs Act, which is also an offence under Narcotics Drugs and Psychotropic Substances Act, 1985 or Chemical Weapons Convention, Act, 2000 or Arms Act, 1959 or Wild Life (Protection) Act, 1972

(c) a person involved in smuggling of goods falling under any of the specified categories of goods such as Special Chemicals, Organisms, Materials, Equipments & Technologies (SCOMET); prohibited items for import or export as

specified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992; goods or a document, which are likely to affect friendly relations with any foreign state or is derogatory to national prestige.

(d) a person who has been allowed to compound once in respect of any offence under the Chapter XVI of the Customs Act, 1962 for goods of value exceeding rupees one crore.

(e) a person who has been convicted under the Customs Act, 1962 on or after the 30th Day of December, 2005.

4. The Board had also issued a Circular No.20/2008-Customs dated 2.12.2008 highlighting the changes made in the scheme of Customs (Compounding of Offences) Rules, 2005 based on the recommendations of the Committee on Subordinate Legislation (Rajya Sabha). These relate to early disposal of applications for compounding by obtaining a factual report within the stipulated period and dispose of the application within the overall time limit of six months. It was also stated that on the basis of the decision of the Supreme Court in the case of U.O.I. vs. Anil Chanana (2008 (222) ELT 481 SC) that compounding of offences is undertaken based on the principle of Disclosure. The basic **rule of disclosure,** underlying Section 137(3) read with Rule 6 of the Customs (Compounding of Offences) Rules, 2005, is that if there are demonstrable contradictions or inconsistencies or incompleteness in the case of the applicant, then the application for compounding cannot be entertained. It is reiterated that the aforesaid decision of the Supreme Court and rule of disclosure shall be followed while considering the compounding of offences. Accordingly, compounding of offences may not be allowed where there are demonstrable contradictions, inconsistencies or incompleteness in the case.

5. Further, at the time of introduction of the Scheme of Customs Compounding of Offences, the salient features of the provisions were explained in the Board's circular. The following are the important points and are reiterated:

(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 may be ensured that verification of such facts is done by calling for a report or any other facts or information available on record from the reporting authority.

(iii) As per Rule 6 of the Customs (Compounding of Offences) Rules, 2005, any person who has made the application for compounding of offence and has made full and true disclosure of facts relating to the case, is given immunity from prosecution for any offence under the Customs Act, 1962 with respect to the case covered by the compounding of offence. Since the filing of application under compounding rules is the individual option of the person to avoid prosecution, other persons involved in the case/ offence and who have not filed the application would not be given immunity from prosecution. In such situation, remaining persons would face regular proceedings of the department for adjudication/ prosecution/ appeal.

(iv) On the basis of the recommendations made by the Committee on Subordinate Legislation (Rajya Sabha) and to enable the Scheme of Compounding of Offences to make a meaningful impact, the compounding amount prescribed under Rule 5 of the said Rules has been revised downwards vide notification No.118/2008-Customs (NT) dated 12.11.2008. A new proviso has also been inserted in this rule, which provides that if a person has, in respect of same goods, committed offences falling under more than one category, i.e., Sl.No.1 to 8 of the table specified in this rule and where amount of duty evasion or amount of drawback or exemption from duty, or amount of market value of the goods is same for all such offences, then the compounding amount, in such cases, shall be the amount determined for the offence for which a higher compounding amount has been prescribed.

(v) In terms of Rule 4, an applicant is required to pay duty, penalty, and interest before submission of an application for compounding of offences. Correspondingly, the Application Form also contains a specific column under Sl.No.12A requiring the applicant to declare whether he has paid the same and their details. Hence, it is clarified that the compounding of offences shall not be allowed unless the aforesaid duty, penalty and interest thereon are paid by the applicant.

6. In order to make best of use of the scheme of compounding of offences, it is reiterated that at the time of intimation/ initiating action for launching of prosecution itself, the assessees should be given an offer of compounding. It may, however, be clarified that the application for compounding shall be decided on merits and in exercise of the powers vested with the Chief Commissioner. In respect of cases where the Chief

Commissioner is not inclined to accede to the applicant's request for compounding, the same may be rejected duly informing the grounds and after following the principles of natural justice.

7. The above instructions may be taken into consideration by the Compounding Authorities while examining the applications for compounding.

8. This Circular supersedes Board's Circular No. 54/2005 dated 30.12.2005.

9. These instructions may be brought to the notice of all concerned by way of issuance of suitable Public Notice / Standing Order.

10. Difficulties, if any, in implementation of the Circular may be brought immediately to the notice of the Board.

Yours sincerely,

(Navraj Goyal)
Under Secretary (Customs Policy)

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