

TN – 1/2008 – CEOFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
NO.1, WILLIAMS ROAD, CANTONMENT, TRICHY-1.

TRADE NOTICE: 01/2008 – CE

DATED : 02.01.2008.

Sub: Communication of Ministry's Notification No. 42/2007-CEX. (NT) dated 27.12.2007 in F.No. 267/22/2005-CX.8 & Board's circular No. 862/20/2007 CX. dated 27.12.2007 in F.No. 267/22/05-CX-8 – Amendments to the Central Excise (Compounding of Offences) Rules 2005 - Regarding.

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Copy of Ministry's Notification No. 42/2007-CEX. (NT) dated 27.12.2007 in F.No. 267/22/2005-CX.8 & Board's circular No. 862/20/2007 CX. dated 27.12.2007 in F.No. 267/22/05-CX-8 regarding Amendments to the Central Excise (Compounding of Offences) Rules 2005 is communicated herewith.

2. 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/16/2/2008 – C.Ex.Pol.)

Sd/-
(VASA SESHAGIRI RAO)
ADDITIONAL COMMISSIONER

To

As per mailing list II / III

Copy of Ministry's Notification No. 42/2007-CEX(NT) dated 27.12.2007 in F.No. 267/22/2005-CX.8.

G.S.R. (E).- 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 to amend Central Excise (Compounding of Offences) Rules, 2005, namely;-

1. (1) These rules may be called the Central Excise (Compounding of Offences) Amendment Rules, 2007.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Central Excise (Compounding of Offences) Rules, 2005 (hereinafter referred to as the said rules),-
 - (a) In rule 4, in sub-rule (3), after the proviso, the following shall be inserted, namely:-
"Provided further that application shall not be allowed unless the duty, penalty and interest liable to be paid have been paid for the case for which application has been made.";
 - (b) For rule 5, the following rule shall be substituted, namely:-
"5. Fixation of the compounding amount.- For the purpose of compounding of offences under the provisions of the Act, the compounding amount shall be as provided in the following Table, namely:-

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TABLE

Sl.No.	Offence	Compounding amount
(1)	(2)	(3)
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	Up to fifty per cent of the amount of duty evasion, subject to minimum of ten percent of duty evasion.
3.	Offence specified under section 9(1)(bb) of the Act	Upto fifty per cent of the amount of duty evasion, subject to minimum of ten percent of duty evasion.
4.	Offence specified under section 9(1)(bbb) of the Act	Upto twenty five per cent of the amount of duty evasion, subject to minimum of ten percent of duty evasion.
5.	Offence specified under section 9(1)(bbbb) of the Act	Upto fifty per cent of the amount of CENVAT Credit wrongly taken or utilized, subject to minimum of ten percent of said amount.
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 five per of the amount of duty evasion, subject to minimum of ten percent of duty evasion.”

Provided that if a person has, in respect of same goods, committed offences falling under more than one category specified above and where amount of duty evasion or amount of CENVAT Credit wrongly taken or utilized is same for all such offences, the compounding amount, in such cases, shall be the amount determined for the offence for which a higher compounding amount has been prescribed.”;

(c) In the Form appended to the said rules, after serial number 12, the following serial number shall be inserted, namely:-

“12A. Whether the amount of duty, penalty and interest have been paid and if yes, the details thereof.”

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

(Rahul Nangare)

Under Secretary to the Government of India

Foot Note: The principal notification No. 37/2005-Central Excise (N.T.), dated the 30th December 2005, was published in the Gazette of India, Part II, Section 3, sub-section (i), vide number G.S.R. 756(E), dated the 30th December, 2005.

Copy of Board’s Circular No. 862/20/2007 CX dated 27.12.2007 in F.No. 267/22/2005-CX.8.

Subject: Amendments to the Central Excise (Compounding of Offences) Rules, 2005

Sir/ Madam,

The undersigned is directed to refer to notification No.42/2007-C.E.(N.T) dated 27.12.2007, wherein amendments have been carried out in the Central Excise (Compounding of Offences) Rules, 2005.

2. Rule 5 of the said Rules has been amended to revise the compounding amount prescribed under the rules. Further, a proviso has 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 specified in this rule and where amount of duty evasion or amount of CENVAT Credit wrongly taken or utilized is same for all such offences, the compounding amount, in such cases, shall be the amount determined for the offence for which a higher compounding amount has been prescribed. The interpretation and scope of this proviso is explained in the following illustrations;

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- a) A non-registered person removes goods without payment of duty which results into committing of offences specified in sub-section (1)(a), (1)(b) and (1)(bb) of section 9 of the Act. In this case, the offence specified under section 9 (1)(b) attracts compounding amount, which may extend up to 50 % of the amount of duty evasion (specified at Sl. No. 2 in the table given in the Notification) and this amount is higher than or equal to those prescribed for other two offences. Therefore, the compounding amount for all the said offences shall be determined under the said category of one offence [under section 9(1) (b)] only.
- b) A person takes or utilizes CENVAT credit wrongly and also furnishes false information. He, therefore, commits offence specified under sub-sections (1)(bbbb) and (1)(c) of Section 9 of the Act. In this case, the offence specified under section 9 (1)(bbbb) attracts compounding amount, which may extend up to 50% of the amount of CENVAT Credit wrongly taken or utilized. This amount is higher than prescribed for other offence. Therefore, the compounding amount for all the said offences shall be determined under the said category of one offence [under section 9(1) (bbbb)] only.
- c) A person removes goods without payment of duty of Rs. 10 lakh and also takes the CENVAT credit of Rs. 20 lakh wrongly, thus committing offence under sub sections (1)(b), (1)(bb) and (1)(bbbb) of Section 9 of the Act. In this case, the compounding amount shall be determined separately for,-
- (i) Removal of goods without payment of duty; and
 - (ii) Wrong availment of CENVAT Credit,
- as the goods involved and duty evasion amount are different for these offences.

3. Further, in rule 4, a new provision has been added, whereby it has been provided that an applicant should pay duty, penalty, and interest before submission of application for compounding. Correspondingly, the Application Form has also been amended.

4. In view of reduction of compounding amount, the assesseees may be persuaded to opt for compounding route in more number of cases. Adequate publicity may be given about reduction of compounding amount, in order to make the scheme more popular as to reduce the cases pending in the Court. Further, in order to make best use of compounding of offence scheme, all persons against whom prosecution is initiated or contemplated, should be informed separately in writing, the offer of compounding. Guidelines issued vide circular no. 54/2005 Cus dated 30.12.2005 shall continue to apply, subject to the amendments made by notification No. 42/2007-C.E.(NT) dated 27.12.2007.

5. The field formations as well as trade and industry may be suitably informed.

6. Hindi version will follow.

Yours faithfully,
(Rahul Nangare)
Under Secretary to the Government of India