Service Tax (Compounding of Offences) Rules, 2012 Giridhar's

In exercise of the powers conferred by clause (i) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994)(hereinafter referred to as "the Act") read with sub-section (2) of section 9A of the Central Excise Act, 1944 (1 of 1944), made applicable to service tax vide section 83 of the Act, the Central Government hereby makes the following rules, namely :

1. Short title and commencement.-

(1) These rules may be called the Service Tax (Compounding of Offences) Rules, 2012.

(2) They shall come into force on the date of publication in the Official Gazette.

2. Definitions.-

In these rules, unless the context otherwise requires,-

(a) "Act" means Chapter V of the Finance Act, 1994 (32 of 1994);

(b) "applicant" means any assessee or any other person, but shall not include officers of Central Excise appointed for exercising the powers under the Act under rule 3 of the Service Tax Rules, 1994;

(c) "compounding authority" means the Chief Commissioner of Central Excise, having jurisdiction over the place where the offence under the Act, have been or alleged to have been committed;

(d) "Excise Act" means the Central Excise Act, 1944 (1 of 1944);

(e) "form" means the form appended to these rules;

(f) "reporting authority" means, the Commissioner of Central Excise or Commissioner of Service Tax, having jurisdiction over the place where the offences under the Act have been or are alleged to have been committed or any other officer as may be authorised 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;

(g) "section" means a section of the Act; and

(h) words and expressions used in these rules and not defined but defined in the Act or Central Excise Act, 1944 shall have the respective meanings assigned to them in the Act or Central Excise Act, 1944, as the case may be.

3. Form and manner of application.-

An applicant may, either before or after the institution of prosecution, make an application under sub-section (2) of section 9A of Excise Act, made applicable to service tax vide section 83 of the Act, 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 amount of service tax 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:

Provided further that application shall not be allowed unless the service tax, penalty and interest liable to be paid have been paid for the case for which application has been made.

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

(5) The applicant shall, within a period of 30 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 shall not claim, as of right, that his offence be compounded.

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:-

Table

S.No.	Offence	Compounding amount
(1)	**(2)**	**(3)**
1.	Offence specified under section 89 (1)(a) of the Act	Up to 50 per cent. of the amount of service tax evasion, subject to minimum of 10 per cent. of amount of tax evaded
2.	Offence specified under section 89 (1)(b) of the Act	Upto 50 per cent. of the amount of CENVAT Credit wrongly taken or utilised, subject to minimum of 10 per cent. of said amount.
3.	Offence specified under section 89 (1)(c) of the Act	Rupees 50000 for the first offence and to be increased by 100 per cent. of this amount for each subsequent offence
4.	Offence specified under section 89 (1)(d) of the Act	Upto 25 per cent. of the amount of service tax not deposited subject to a minimum of 2 per cent. for each month for which the amount has not been so deposited.

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

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 such person, subject to such conditions as he may think fit to impose, immunity from prosecution for any offence under the Act, 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 the order or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of the Act, shall apply as if no such immunity had been granted.

(2) An immunity granted to a person under sub-rule (1) 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 material particulars, or had given false evidence, and thereupon the 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 of the Act, shall apply as if no such immunity had been granted.

Central Excise (Compounding of Offences) Rules, 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 :

Rule 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.

Rule 2. Definitions. -

In these rules, unless the context otherwise requires,

(a) "Act" means the Central Excise Act, 1944 (1 of 1944);

(b) "applicant" means any assessee or any other person, but shall not include officers of Central Excise as appointed by Board or Commissioner of Central Excise under Rule 3 of the Central Excise Rules, 2002;

(c) "compounding authority" means the Chief Commissioner of Central Excise, 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;

(e) "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 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.

Rule 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.

Rule 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.
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. **(27.12.2007)**

(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.

Rule 5. Fixation of the compounding amount.- (substituted w.e.f.27.12.2007)

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 :-

TABLE

S. No.	Offence	Compounding amount
(1)	(2)	(3)
1	Offence specified under section 9(1)(a) of the Act	Rupees 50000 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 50 per cent of the amount of duty evasion, subject to minimum of 10 per cent of duty evasion.

3	Offence specified under section 9(1)(bb) of the Act	Upto 50 per cent of the amount of duty evasion, subject to minimum of 10 per cent of duty evasion
4	Offence specified under section 9(1) (bbb) of the Act	Upto 25 per cent of the amount of duty evasion, subject to minimum of 10 per cent of duty evasion.
5	Offence specified under section 9(1)(bbbb) of the Act	Upto 50 per cent of the amount of CENVAT Credit wrongly taken or utilized, subject to minimum often per cent of said amount.
6	Offence specified under section 9(1)(c) of the Act	Rupees 50000 for the first offence and to be increased by 100 per cent of this amount for each subsequent offence.
7	Offence specified under section 9(1)(d) of the Act	Upto 25 per of the amount of duty evasion, subject to minimum of 10 per cent 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.

Rule 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.

Rule 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.

Customs (Compounding of offences) Rules, 2005

In exercise of the powers conferred by clause (h) of sub-section (2) of section 156, read with sub-section (3) of section 137, of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely :-

1. Short title and commencement.-

(1) These rules may be called the Customs (Compounding of Offences) Rules, 2005.

(2) 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 Customs Act, 1962 (52 of 1962);
b	"applicant" means any importer, exporter or any other person, but shall not include officers of Customs as appointed by Board or Commissioner of Customs under section 4;
c	"compounding authority" means the Chief Commissioner of Customs, having jurisdiction over the place where the offence under the Customs Act, 1962, has been or alleged to have been committed;
d	"form" means the form appended to these rules;
e	"reporting authority" means the Commissioner of Customs, having jurisdiction over the place where the offence under the Act has been or alleged to have been committed or any other officer as may be authorized in this regard by the Chief Commissioner of Customs having jurisdiction over the place where such offence has been or 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 (3) of section 137 in the form appended to these rules, to the compounding authority for compounding of the offence.

Explanation.- Where an offence has been committed at more than one place falling under the jurisdiction of more than one compounding authority, then the Chief Commissioner of Customs having jurisdiction over such place where the value of goods seized, or the amount of duty evaded or attempted to be evaded or amount of export incentives wrongly claimed or attempted to be claimed wrongly is more than 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.

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.**(w.e.f.12.11.2008)**

(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 in the following Table **(w.e.f.12.11.2008)**

Provided that if a person has, in respect of same goods, committed offences falling under more than one category specified below and where amount of duty evasion, or, amount of drawback or exemption from duty, provided under the Act in connection with export goods; or amount of market value of the goods 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.

Sl.No.	**Offence**	**Compounding amount**
(1)	(2)	(3)
1.	Offence specified under Section 132 of the Act	50000 rupees for the first offence and to be increased by 100 per cent. of this amount for each subsequent offence.
2.	Offence specified under Section 133 of the Act	50000 rupees for the first offence and to be increased by 100 per cent. of this amount for each subsequent offence.
3.	Offence specified under Section 134 of the Act	50000 rupees for the first offence and to be increased by 100 per cent. of this amount for each subsequent offence.
4.	Offence specified under Section 135 (1) (a) of the Act	Upto 10 per cent. of the amount of market value of the goods, subject to a minimum of 1 lakh rupees.
5.	Offence specified under Section 135 (1) (b) of the Act	Upto 5 per cent. of the amount of market value of the goods, subject to a minimum of 1 lakh rupees.
6.	Offence specified under Section 135(1) (c) of the Act	Upto 10 per cent. of the amount of market value of the goods, subject to a minimum of 1 lakh rupees.
7.	Offence specified under Section 135(1) (d) of the Act	Upto 10 per cent. of the amount of market value of the goods, subject to a minimum of 1 lakh rupees.
8.	Offence specified under Section 135A of the Act	Upto 5 per cent. of the amount of market value of the goods, subject to a minimum of 1 lakh rupees.

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 Customs Act, 1962 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 Customs Act, 1962 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 of the Customs Act, 1962 shall apply as if no such immunity had been granted