

Public Notice No.2 /2006  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
OFFICE OF THE COMMISSIONER OF CUSTOMS  
CUSTOM HOUSE, NEW HARBOUR ESTATE, TUTICORIN – 628 004

PUBLIC NOTICE NO. 2/2006

The following letter issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs are enclosed herewith for the guidance of the Officers/ Importers/ Exporters/ Clearing Agents and Trading Public .

Sl.No  
Circular No/File No  
Subject

1  
Circular No. 54/2005 - Cus  
Dated 30.12.2005  
F.No.450/67/2003-CUS IV  
Guidelines for compounding of offences under Customs and Central Excise Acts - Reg

2 Circular No. 03/2006 -Cus  
Dated 10.01.2006  
F.No.305/75/2000 - FTT (Vol VI) Administrative control over Export Oriented Units (EOU) Instructions  
3 Circular No. 7/2006 - Cus  
Dated 13.01.2006  
F.No. 305/69/2005-FTT Procedural relaxation under EOU and Jewellery Export Promotion Schemes

(Issued from file C.No:VIII/9/2/2006-Cus. Pol)

Encl: As above.  
Dated 24.01.2006

(S.PA,ANIYANDI)  
JOINT COMMISSIONER

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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 gazette. 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.

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

(Anupam Prakash)

Under Secretary to the Government of India

Phone No.23094182

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Circular No.03 /2006-Customs  
10th January, 2006  
F.No.305/75/2000-FTT(Vol-VI)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

Sub:- Administrative Control over Export Oriented Units (EOUs)– Instructions Reg.

Your attention is invited to Board's Circular No. 31/2003-Cus dated the 7th April,2003 on the above subject. As per existing instructions, in the port cities, the administrative control over all the EOUs including EHTP and STP units falling within the territorial jurisdiction of Commissioner of Customs shall be with the Commissioner of Customs. At other places, the administrative control over EOU/EHTP/STP units shall be with jurisdictional Commissioner of Central Excise. The only exception will be in respect of Bangalore Customs. The Commissioner of Customs, Bangalore will continue to have administrative control over all such units within his territorial jurisdiction.

2. It has been brought to the notice of the Board, that Bangalore Customs Commissionerate has jurisdiction over 10 revenue districts over Karnataka viz, Bangalore Urban, Bangalore Rural, Tumkur, Kolar, Mysore, Mandya, Chamarajanagar, Chitradurga ,Davangiri and Haveri. In practice, only EOUs falling with in four districts of Bangalore Urban, Bangalore Rural, Tumkur and Kolar are being administered by customs division with in Bangalore Customs Commissionerate and EOUs falling in other six districts are administered by jurisdictional Central Excise Commissionerate. But Board's Circular 31/2003-Cus which provides that Commissioner of Customs, Bangalore will have administrative control over the EOU/EHTP/STP under his territorial jurisdiction has created confusion.

3. The matter has been examined. Considering the fact that the Customs Division under the jurisdiction of Bangalore Commissionerate caters only to the EOU/EHTP/STP located in districts of Bangalore Urban, Bangalore Rural, Tumkur and Kolar, the Board has decided that henceforth, the Commissioner of Customs, Bangalore, will have administrative control over EOUs/EHTP/STP units located only in the district of Bangalore Urban, Bangalore Rural, Tumkur and Kolar. The EOUs/EHTP/STP units located in any other places other than the above mentioned districts with in the territorial jurisdiction of Commissioner of Customs, Bangalore, would be administered by the jurisdictional Commissioner of Central Excise.

4. Board's Circular Nos. 31/2003-Customs, dated 7-4-2003, stands amended to the above extent.

5. Difficulty, if any faced in implementation of the above said instruction, may please be brought to the notice of the Board at the earliest.

6. Wide publicity may please be given to the above said instruction by way of issuance of public notice.

7. Please acknowledge receipt.

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Circular No. 7 /2006-Cus  
13th January, 2005

F. No.305/69/2005-FTT  
Government of India

Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

Sub: Procedural relaxation under EOU and Gem and Jewellery Export Promotion Schemes- Reg.

I am directed to invite your attention to the various measures taken subsequent to the issue of Annual supplement to Foreign Trade Policy (FTP) 2004-2009. In order to implement the changes brought in respect of EOU/EHTP/STP Schemes and Gem & Jewellery Export Promotion Scheme necessary amendments have been carried out in the notifications governing duty free import/ procurement of goods and DTA sale of goods by EOU/EHTP/STP as well as in notifications relating to Gem and Jewellery Schemes. In this regard notification No. 50/2005-Cus. and 28/2005-C.E., both dated 20.05.2005, may please be referred to. Further the following changes are introduced in order to simplify and prescribe uniform procedures.

Time bound certification for de-bonding from EOU scheme:

2. Paragraph 6.18(e) of the FTP has been amended in order to rationalize and simplify the procedure for de-bonding. As per the new procedure, the EOU/EHTP/STP units proposing to de-bond would intimate the Development Commissioner and jurisdictional Customs/ Central Excise authority in writing. The unit would itself assess the duty liability and submit the details of such assessment to jurisdictional Customs/ Central Excise authority. The Deputy/ Assistant Commissioner of Customs/ Central Excise would be required to confirm the duty liability on priority within 15 working days of receipt of details of assessment from the unit. Further he shall issue 'No Dues Certificate' to the unit after payment of duties and other dues. In case of any discrepancy, it should be conveyed to the unit within the said 15 days. On receipt of the above mentioned 'No Dues Certificate', the unit shall apply to the concerned Development Commissioner for de-bonding.

DTA Sale:

3. The paragraph 6.8 (a) of the FTP provides that EOU/EHTP/STP may sell goods upto 50% of FOB value of exports in DTA on payment of concessional duty subject to fulfillment of positive NFE. It also provides that within the entitlement of DTA sale, the unit has to sell in DTA its products similar to the goods, which are exported or expected to be exported. There has been doubt as to what constitutes 'similar goods'. Further, when the units are not required to take any permission for DTA sale under paragraph 6.39.9, it is felt necessary to provide definition of "similar goods" to bring clarity and uniformity. Therefore, it has been decided that the definition of 'similar goods' would be based on the definition of similar goods as provided in the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. The term 'similar goods' means "goods which is although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods which have been exported or expected to be exported having regard to the quality, reputation and the existence of trade mark and produced in the same unit by the same person who produced the export goods". The Board's Circular No. 85/95 dated 26-7-95 issued in this regard stands rescinded.

Verification of Premises of EOU/EHTP/STP:

4. Development Commissioners are required to verify the premises of the EOU before issuance of LOP. However, on many occasions it was found that proper verification could not be conducted by them on account of non-availability of sufficient manpower and infrastructure. Therefore, based on request of the Board to issue LOP only after necessary site verification, the Department of Commerce have suggested that the site verification may be conducted through the office of the jurisdictional Deputy/ Assistant Commissioner of Customs or Central Excise, as the case may be. Therefore, it has been decided that the office of the jurisdictional Deputy/ Assistant Commissioner of Customs or Central Excise, as the case may

be, would undertake the site verification on such requests from the Development Commissioner and would send the factual report to the Development Commissioner. In view of this, in case any such request is received from the Development Commissioner for verification of premises, the same may be attended on priority keeping in mind that LOP has to be issued within a fixed time frame.

Dispensing with the requirement of ARO for supply of goods by EOU/EHTP/STP units to advance License Holders

5. Paragraph 4.1.11 of FTP allows the holders of Advance License and DFRC to source goods from EOU/EHTP/STP against Advance Release Order (ARO) issued by DGFT or Back to Back inland letter of credit issued by banks. These are instruments for sourcing goods from indigenous sources against Advance License and DFRC. The Notification No 23/2003-CE governing DTA sale of goods manufactured by EOU/EHTP/STP on concessional rate of duty, also provides that EOU/EHTP/STP may sell the goods against Advance Release Order (ARO) issued against Advance License or DFRC. In the amended FTP the provision of ARO has been done away with. It has been provided that Advance License Holders or DFRC holder can source goods from EOU/EHTP/STP on the basis of Advance license or DFRC itself. Therefore, in order to implement the provision of FTP, the Notification No 23/2003-CE dated 31-3-2005, was suitably amended. Henceforth the goods manufactured in EOU/EHTP/STP may be sold to Advance License Holders/ or DFRC holders on the basis of Advance License or DFRC itself. However, the jurisdictional Assistant Commissioner shall make endorsement on the reverse of the original copy Advance License/DFRC so as to clearly indicate the extent of the value already utilized. A copy of the advance license or DFRC after making endorsement shall be sent to the licensing authority and concerned Deputy Commissioner/Assistant Commissioner of Customs/Central Excise of the licensee. In addition to that, the procedure as applicable for duty free import of goods against advance license /DFRC would continue to apply.

Simplified procedure for Inter-unit Transfer of Manufactured goods:

6.1. Paragraph 6.13(a) of FTP provides for transfer of manufactured goods from one EOU/EHTP/STP to another EOU/EHTP/STP unit. It has been brought to the notice of the Board by DGFT that for such inter-unit transfer, no uniform procedure is followed in the field. For the purpose of uniformity, it is decided to prescribe the following simplified procedure in respect of such inter-unit transfer of manufactured goods.

6.2. Since goods manufactured in EOU/EHTP/STP are excisable goods and inter unit transfer of goods from one unit to another is only bond to bond transfer, it has been decided that in all such cases, goods would be removed from one EOU/EHTP/STP to another under the cover of ARE-3. However, the goods to be transferred shall be properly examined by the bond officer and sealed in his presence before dispatch to the other EOU/EHTP/STP unit. The jurisdictional customs/ central excise officer in-charge (bond officer) of the receiving unit shall examine the seal on receipt of the goods in the premises of receiving unit and if the seals are found intact, issue necessary re-warehousing certificate. In case of discrepancy in seals the goods may be examined to verify proper receipt before issue of such re-warehousing certificate. The copy of the re-warehousing certificate along with examination report shall then be sent to the jurisdictional customs/ central excise officer in-charge of the transferor unit.

Sharing of Goods between EOU/STP units:

7.1. The provision for sharing of specified goods (common facilities ) were allowed between the STP units belonging to the same owner, located in the same compound or adjoining premises. Requests have been received from trade and industry, to allow sharing of specified goods between STP and EOU. The sharing of common facilities between the STP units were allowed on the ground that it would optimize the utilization of IT infrastructure between two units of the same owner and thus would make the projects cost effective. The STPs are nothing but sector specific EOUs. In order to meet the requirement of dynamic nature of IT industry, it has been found justified to allow sharing of certain common facilities between/ amongst EOU /EHTP/ STP units belonging to same owner.

7.2. Accordingly, the notification No.52/2003-cus and 22/2003-CE both dated 31.3.2003 was amended to allow sharing of specified goods viz, diesel generating sets or captive power plants, central air conditioning equipments, uninterrupted power supply system, net-working equipments, EPABX, fax, photocopier equipments, data transfer protocol equipments and security system between EOU/EHTP/STP units belonging to the same owner and irrespective of their location. However, such goods shall not be removed from the unit, which had imported or procured such goods.

#### Import/procurement of DG Sets:

8. The notification Nos. 52/2003-Cus and 22/2003-CE both dated 31-3-2003 governing duty free import and procurement of goods by EOU/EHTP/STP units provided for import/procurement of DG sets/captive power plant on the recommendation of Development Commissioner/Designated officer. Para 6.39.6 of HOP relating to Fast Track Clearance provides that procurement of DG sets of capacity commensurate with the actual requirement of the unit shall be permitted to status holder EOU/EHTP/STP unit under intimation to the Development Commissioner and the jurisdictional Central Excise authority. Therefore, in order to align the notification Nos. 52/2003-Cus and 22/2003-CE both dated 31-3-2003 with the provision of HOP, suitable amendment in these notifications was carried out. Hence the recommendation of Development Commissioner need not be insisted and this facility may be permitted on the basis of simple intimation as above.

#### Re-warehousing Certificate:

9. Instances have come to the notice of the Board that, in many cases, the field formations issue re-warehousing certificates in respect of imported /indigenously procured goods with out any physical verification of receipt of such goods leading to misuse of exemption notification. It may be noted that inputs and capital goods are allowed to be imported and procured from indigenous sources on the condition that such goods shall be used within the bonded premises of EOU for specified purpose. It is the responsibility of bond officer to ensure that duty free goods are received in the premises of EOU/EHTP/STP units and are duly accounted for. Therefore, it is reiterated that re-warehousing certificate should be issued only after physical verification of the goods.

#### CT-3 and Procurement Certificate:

10.1. Please refer to the Board's letter dated 17-10-2002 issued from F. No 305/119/2000-FTT, wherein it was suggested that in case any serious discrepancies are noticed against any EOU, immediate action may be taken by way of suspension of facility of issuance of CT-3/procurement certificates.

10.2. The matter has been revisited. The withdrawal of CT-3/ Procurement certificate facility causes a great hardship and adversely affects the day-to-day operations of the unit by denying exemption on inputs meant for production of export goods. It also impinges upon the livelihood of the labour engaged in manufacturing and production activities of the affected EOUs. Therefore it has been decided that in case any gross misuse/abuse of the EOU Scheme by any EOU/EHTP/STP is noticed or any evidence suggesting prima facie evasion of substantial duty by EOU/EHTP/STP comes to light, the CT-3 procurement certificate facility to the EOU/EHTP/STP may not be suspended with immediate effect. Instead the jurisdictional Deputy/ Assistant Commissioner may withdraw the facility of pre-authenticated CT-3 certificate for a period for six months at a time, and allow the unit to import/ procure goods duty free on the basis of individual CT-3 certificates/ procurement certificates subject to the condition that the unit furnished additional bank guarantee to cover the 100% duty foregone on such duty free import/ procurement. However, this executive order of the jurisdictional Deputy/ Assistant Commissioner may be reviewed or amended by the jurisdictional Commissioner of Customs or Central Excise, on receipt of any request from the unit. It is further clarified that while deciding to withdraw the facility of pre-authenticated CT-3 certificate, proper care may be taken that the withdrawal is not done for mere procedural violations.

#### Re-import of rejected jewellery:

11. In the FTP, 2004-2009, that came into effect on 31st August, 2004, a provision was made in the Handbook of Procedures (HOP) vide paragraph 4.83 to allow exporters of plain/studded precious metal jewellery for re-import of duty free jewellery, rejected and returned by the buyer, upto 2% of FOB value of exports in the preceding licensing year. The notification No. 94/96-Cus dated 16-12-96 already allows re-import of goods. The re-import of rejected jewellery is covered under Sl. No 3 of the Table to the said Notification. Hence this facility may be extended to such cases of re-import by Gem and Jewellery exporters. However, if any export incentives have been availed on the export of goods, which have been re-imported, the same has to be paid back as the re-import has nullified the effect of export.

Increased limit of duty free import of sample by Gem & Jewellery sector:

12. The notification No 154/94-Cus dated 13-07-94 allows duty free import of commercial samples valued upto Rs 60,000 or 15 units in number within a period of 12 months, as personal baggage by bonafide commercial travelers or businessmen are imported by post or air. New Paragraph No. 4A.31 has been inserted in HOP so as to enable exporters of Gem & Jewellery sector to import samples without payment of duty up to Rs. Three lakhs or upto 0.25% of average 3 years export, whichever is lower. In order to implement the provision of HOP, notification No.154/94-Cus dated 13-07-94 was amended suitably by notification No.50/2005-Cus. However to obviate chances of misuse, the notification imposes a condition that the importer shall produce a certificate from the Gem & Jewellery Export Promotion Council certifying the value of export made during three immediate preceding three years and also the value and quantity of goods already imported under this notification during the last twelve months. The information provided by the Gem & Jewellery Export Promotion Council may be used to ensure that the notification is properly implemented.

Import of plain/studded/metal jewellery for the purpose of jobbing and subsequent export.

13. The Customs Notification No. 32/97-Cus dated 1-4-97 allows duty free import for execution of export order placed on the importer. It has been brought to the notice by the DGFT that overseas manufacturers and traders prefer sending the semi-finished jewellery for job work / processing in India and subsequent export thereof. Therefore such semi-finished gold jewellery of 18 carat and below & platinum and silver jewellery may also be imported duty free under the Notification No 32/97-Cus subject to the conditions of the notification. Hence this facility may be extended to such cases of job work/processing undertaken by Gem and Jewellery exporters.

14. Wide publicity may please be given to these instructions by way of issuance of Public Notice.

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