

## **ANALYSIS OF NOTIFICATION NO. 17/2012-ST, DATED 29th May, 2012**

### **[Service Tax (Compounding of Offences) Rules, 2012]**

Section 89 of Finance Act, 1994 laid down provision for prosecution in respect of specified offences.

Section 9A of Central Excise Act, 1944 made applicable to service tax vide section 83 of Finance Act, 1994 laid down provision of making application for compounding of offences.

Now NN 17/2012 -ST, DATED 29th May, 2012 made Service Tax (Compounding of Offences) Rules, 2012 and these rules provides manner of making application for compounding of offences and give power to compounding authority to grant immunity from prosecution.

**Brief analysis of above provisions are given below for over all understanding of these provisions and its benefit to the interested parties.**

Last year Finance Act, 2011 had reintroduced Prosecution Provision by inserting section 89. In same line section 9A of Central Excise Act, 1944 had also been made applicable for compounding of offences by amending section 83 of Finance Act, 1994. Section 89 provide **whoever commits** any of the specified offences shall be punishable as under:

<b>S. No.</b>	<b>Case</b>	<b>Punishment</b>
1.	in the case of an offence where the amount exceeds ₹ 50 lakh	1. with imprisonment for a term which may extend to 3 years 2. However in any case, it shall not be less than 6 months
2.	in any other case,	1. with imprisonment for a term which may extend to 1 year.

**Specified offences under section 89 are as under:**

<b>S. No.</b>	<b>Section</b>	<b>Offences</b>
1	89(1)(a)	knowingly evades the payment of service tax under this Chapter; or
2	89(1)(b)	avails and utilises credit of taxes or duty without actual receipt

		of taxable service or excisable goods
3	89(1)(c)	<ol style="list-style-type: none"> <li>1. maintains false books of account or</li> <li>2. fails to supply any information or</li> <li>3. supplies false information;</li> </ol>
4	89(1)(d)	collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due

**Section 9A (2) of Central Excise Act, 1944 provides as under:**

Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such manner of compounding as may be prescribed.

**Relevant Extract of Memorandum 2 of Finance Bill, 2012**

Section 94(2) is being amended to obtain powers to provide for the manner of compounding and to specify the amount of compounding of offences along the lines of Central Excise (Compounding of Offences) Rules, 2005;

By exercising above power now central Government has made the Service Tax (Compounding of Offences) Rules, 2012 wef 29.05.2012. These rules provides following provisions:

1. Form and manner of application
2. Procedure on receipt of application under rule 3
3. Fixation of the compounding amount
4. Power of compounding authority to grant immunity from prosecution
5. Withdrawal of immunity from prosecution in certain conditions

**Conclusively we can say that now whoever has committed specified offences under 89 may get the immunity from prosecution by following provisions given in Service Tax (Compounding of Offences) Rules, 2012.**

Please find the said notification for detail in annexure. I hope above analysis is useful for you.

Your valuable feedback in respect of same would be highly appreciated.

(Disclaimer: The above analysis has been drafted as per various provisions of Finance Act 1994, and notifications and circulars issued thereunder. The analysis may not be entirely correct for reader to reader due to different interpretations by different readers. The readers are advised to take into the consideration the prevailing legal position before acting on any of the comments in this reply. We shall not be responsible for any loss caused based on this interpretation.)

**With Warm Regards,**

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## **ANNEXURE**

### **Notification No. 17/2012-ST, Dated : 29th May, 2012**

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 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 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 fifty per cent. of the amount of service tax evasion, subject to minimum of ten per cent. of amount of tax evaded.
2.	Offence specified under section 89 (1)(b) of the Act	Upto fifty per cent. of the amount of CENVAT Credit wrongly taken or utilised, subject to minimum of ten per cent. of said amount.
3.	Offence specified under section 89 (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.
4.	Offence specified under section 89 (1)(d) of the Act	Upto twenty five per cent. of the amount of service tax not deposited subject to a minimum of two 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.

**FORM**

**(See rule 3)**

**Application for Compounding of Offence**

1. Full Name and permanent address of the applicant:
2. Address for communication:
3. (i) Permanent Account Number (PAN):  
(ii) Service Tax Registration No:
4. Commissioner of Central Excise/Service Tax having jurisdiction over the applicant:
5. Specific provision(s) of Chapter V of the Finance Act, 1994, against whose violation, prosecution is instituted or contemplated for which application of compounding is being filed:
6. Details of Adjudication Order in relation to the case for compounding:
7. Brief facts of the case and particulars of the offence (s) charged:
8. Whether Show Cause Notice issued:
9. If yes, details of service tax demanded:
10. Whether Show Cause Notice has been adjudicated:
11. If yes, adjudication details:

(a) Amount of service tax confirmed:

(b) Amount of CENVAT credit to be recovered/denied:

(c) Penalty imposed:

12. Whether this is the first offence under Chapter V of the Finance Act, 1994, if not, details of previous cases:

13. Whether any proceedings for the same offence contemplated under any other law, if so, the details thereof:

Name and Signature of the applicant.

### **DECLARATION**

1. I shall pay the compounding amount, as may be fixed by the compounding authority under sub-rule (3) of rule 4 of the Service Tax (Compounding of Offences) Rules, 2012.

2. I understand that I shall not claim, as of right that the offence committed by me under the Act be compounded.

Name and Signature of the applicant.

### **VERIFICATION**

I, \_\_\_\_\_ son/daughter/wife of \_\_\_\_\_ residing at \_\_\_\_\_ do solemnly declare that I am making this application in my capacity as \_\_\_\_\_ and I am competent to verify it. That the contents of this application are true to the best of my knowledge and belief and no information relevant to the facts of the case has been suppressed. The documents accompanying the application are true copies of the originals and the tables showing financial transactions are correct and are duly attested by me. Verified today the \_\_\_\_\_ day of (month) \_\_\_\_\_ (year) at \_\_\_\_\_.

Name and Signature of the applicant

Place:

Date:

(Raj Kumar Digvijay)

Under Secretary to the Government of India