

Service Tax (Provisional Attachment of Property) Rules, 2008**NOTIFICATION NO. 30/2008-SERVICE TAX, DATED 1-7-2008**

In exercise of the powers conferred by sub-sections (1) and (2) of section 94 read with section 73C of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. — (1) These rules may be called the Service Tax (Provisional Attachment of Property) Rules, 2008.

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

2. Definitions- (1) In these rules, unless the context otherwise requires,-

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

(b) “pending revenue” means any service tax that has not been levied or paid or has been short-levied or paid or erroneously refunded in respect of which a notice has been served under sub-section (1) of section 73 or sub-section (3) of section 73 A;

(c) “property” includes immovable property;

(d) “personal property” means any movable or immovable property belonging to a proprietor or partner or director, which is not in relation to business activity;

(e) “section” means a section of the Act;

(2) Other words and expressions used in these rules shall have the meaning assigned to them under the Act or rules made thereunder or if such words or expressions are not defined in the Act but defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, they shall have meaning assigned to them in that Act or the rules made thereunder.

3. Procedure for provisional attachment of property. — (1) If the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, is satisfied that it is necessary or expedient, for the purpose of protecting the interest of revenue, during the pendency of any proceeding under section 73 or section 73A of the Act, to attach provisionally any property belonging to a person on whom a notice has been served under sub-section (1) of section 73 or sub-section (3) of section 73A of the Act, shall after due verification of the facts, and the circumstances of the case, forward a proposal for provisional attachment of property of such person, to the Commissioner of Central Excise, in the format annexed to these rules.

(2) The Commissioner of Central Excise, on receipt of proposal as specified in sub-rule (1), or on his own, if he is satisfied that circumstances of case justify provisional attachment, may cause service of a notice on such person for provisional attachment, with reasons for initiating action under these rules and the details of property to be attached provisionally, giving opportunity to such person to make submissions in this regard, within fifteen days of service of such notice.

(3) Upon consideration of submissions made by such person, in writing or in person or both, the Commissioner of Central Excise may pass an order in writing to attach provisionally any property belonging to such person:

Provided no such order shall be issued to attach the personal property of Proprietor or Partners or Directors, as the case may be.

4. The property that can be attached- (1) The provisional attachment of property shall be to the extent it requires to protect the interest of revenue, that is to say, the value of property attached shall be of value as nearly as may be equivalent to that of the amount of pending revenue against such person.

(2) The movable property belonging to such person shall be attached only if the immovable property available for attachment is not sufficient to protect the interest of revenue.

5. Obligations of person whose property has been attached provisionally

Where a property has been provisionally attached, the said person or his representative shall not mortgage, lease, transfer, deliver or deal with the attached property in any manner except with the previous approval of the Commissioner of Central Excise.

6. Period for which order of provisional attachment of property remains in force- (1) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the service of the order passed under sub-rule (3) of rule 3.

Provided that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period as he thinks fit, provides that the total period of extension shall not in any case exceed two years.

(2) Notwithstanding anything contained in sub-rule (1), every such provisional attachment shall cease to have effect when the said person pays the pending revenue alongwith interest thereon.

[F. No. 137/120/2006-CX.4]

FORMAT

[See rule 3(1)]

Proforma for forwarding the proposal for publishing of names and other details

1. Name and address of the assessee or person:
2. Service Tax Code (STC) No. or Registration No. (if any):
3. Constitution of assessee:
(Proprietorship or Partnership or Private Ltd or Public Ltd or Registered Trust or Society or Other (specify))
4. Commissionerate:
5. Division:
6. Details of show cause or demand notice:
7. Amount involved in the show cause notice:
8. Reasons for provisional attachment of property.
9. Address and other details of property;
10. Value of property proposed to be attached:
11. Details of previous offences, if any:
12. Comments, if any:

Date:

Signatures of Assistant or Deputy Commissioner of Central Excise or Service Tax

(With name and official seal)

Instructions regarding provisional attachment of property under section 73C of the Finance Act, 1994

CIRCULAR NO. 103/06/2008-ST, DATED 1-7-2008

Section 73C of the Finance Act, 1994 (hereinafter referred to as the Act) provides for provisional attachment of property for the purposes of protecting the interests of revenue during the pendency of any proceedings under section 73 or section 73A of the Act.

2. In this connection the following guidelines are issued to maintain uniformity in its implementation by field formations.

(i) The proceedings for provisional attachment can be initiated only after issue of Show Cause Notice under section 73 or section 73A of the Act.

(ii) During the pendency of the proceedings under section 73 or 73A of the Act, if the Central Excise Officer is of the opinion that, in order to protect the interests of revenue, it is necessary to attach the property of the noticee, he shall prepare a proposal in the format prescribed under the sub-rule(1) of rule 3 of the Service Tax (Provisional Attachment of Property) Rules, 2008, issued vide notification No. 30/2008-ST, dated the 1st July, 2008, and forward the same to the jurisdictional Commissioner of Central Excise for his approval, except in cases where the proceedings under section 73 or section 73A of the Act are pending before such Commissioner of Central Excise, in which case he shall himself make the order of attachment, in accordance with the procedure set out in para (iv) below.

(iii) It is important to note that there should be sufficient justification to hold a view that the provisional attachment of property is necessary to protect the interests of revenue. The remedy of attachment being, by its very nature, extraordinary, has to be resorted to in the utmost circumspection and with maximum care and caution. The grounds on which the Central Excise Officer entertains the reasonable belief that the notice would dispose of, or remove, the property and the sources of his information, if any, should be clearly stated while seeking the approval of the Commissioner of Central Excise. Normally, the proposal should be forwarded within one month's period of the issue of show cause notice. It may also be noted that appropriate disciplinary action shall be initiated against the officers who may be found to exercise the powers of provisional attachment of property frivolously and without sound reasons. [Recommendation of the Standing Committee on Finance (Fourteenth Lok Sabha) in its 27th Report.]

(iv) The Commissioner of Central Excise, on receipt of proposal, or on his own, if he is satisfied that circumstances of the case justify provisional attachment, may serve a notice on the person on whom a notice is served under Section 73 or 73A of the Act, requiring such person to make submissions, in writing or in person or both, within fifteen days of serving of the notice as to why the property belonging to such person, and as may be specified in the notice, be not provisionally attached. The said notice should also specify the condition that the noticee should not sell, transfer, mortgage, charge, lease or otherwise alienate or encumber the property specified in the notice, till the decision of the said notice. In case of proposal for provisional attachment of immovable property, the notice should also be sent to the concerned registration authorities with a direction not to allow any sale, transfer, mortgage etc., of the property.

(v) After due consideration of the materials before him, and after hearing the person, if such person so desires, the Commissioner of Central Excise may grant approval to the provisional attachment of the property and the Central Excise Officer before whom the proceedings under Section 73 or 73A of the Act are pending, may, by order in writing, attach the said property. The Commissioner shall grant such approval, or, where proceedings under section 73 or 73 A of the Act are pending before him, order the attachment of the property, within fifteen days of holding of personal hearing. A copy of the order of provisional attachment should be served by the Central Excise Officer in the same manner as prescribed under section 37 C of the Central Excise Act, 1944, as made applicable to service tax vide section 83 of

the Act.

(vi) The following types of offences committed by a service provider on an exporter may be considered for provisional attachment of property:-

(a) Provision of a taxable service without the cover of an invoice or any other document, as prescribed, and without payment of tax;

(b) Provision of a taxable service without declaring the correct value for payment of service tax, where a portion of value of taxable service, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account.

(c) Taking of CENVAT credit without the receipt of goods or services specified in the document based on which the said credit has been taken;

(d) Taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;

(e) Issue of service tax invoice or any other document, without providing or to be providing a taxable service, as specified in the said invoice or other document;

(f) Claiming of refund or rebate in a fraudulent manner such as on invoice or other documents which a person has reason to believe as not genuine.

(vii) The provisional attachment of property shall be resorted only in a case where the service tax or CENVAT credit alleged to be involved is more than Rs. 25 lakh (twenty five lakh).

(viii) Period of Attachment :

(a) The order of provisional attachment of property shall be operational only for a period of six months from the date on which the order is served on the noticee. However, the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, but the total period of extension shall not, in any case, exceed two years.

(b) The order of provisional attachment shall cease to have effect if the noticee pays the entire duty amount along with interest.

(ix) Types of property which can be attached :

(a) Personal property of a sole proprietor or partners shall not be attached. Personal property means any movable or immovable property which is in personal use of the sole proprietor or partner. However, immovable property/ properties which *is/* are used for commercial purpose may be provisionally attached.

(b) Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper normal business of the assessee. This would mean that inputs required for provision of a service should not be attached by the department.

(x) **Attachment not to be excessive:** Provisional attachment by arrest or distrain of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 73 or section 73A of the Act.

(xi) **Attachment between Sunrise and Sunset:** The provisional attachment of the property of the concerned person by arrest or distrain shall be made after sunrise and before sunset and not otherwise.

(xii) **Inventory:** After provisional attachment of the property, the Central Excise Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to defaulter or the person from whose charge the property is distrained.

(xiii) Private alienation to be void in certain cases:

(a) where a notice has been served on a person for provisional attachment, the person on whom such notice has been served or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Commissioner of Central Excise.

(b) Where a provisional attachment has been made, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such provisional attachment, shall be void as against all claims enforceable under the provisional attachment.

(xiv) **Share in property** : Where the property to be provisionally attached consists of the share or interest of the concerned person in property belonging to him and another as co-owners, the provisional attachment shall be made by a notice to the concerned person prohibiting him from transferring the share or interest or charging it in any way.

(xv) Property exempt from attachment:

(a) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from provisional attachment.

(b) The decision of the Commissioner of Central Excise as to what property is so entitled to exemption shall be final.

3. Trade & field formations may be informed suitably.

F.No. 137/120/2006-CX4