

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE: TRICHY.
NO.1, WILLIAMS ROAD, CONTONMENT, TRICHY-620 001.

General Circular No.1/2008 S. Tax

Dated: 24-3-2008.

Subject: Service Tax –Circular No.100/3/2008-ST dt. 12-3-08 -
Guidelines in respect of publication of names under section
73D of the Finance Act, 1994- Communication - regarding.

Copy of Ministry's Service Tax Circular No.100/3/2008-ST both dt. 12-3-08 issued F.No.137/102/2006-CX.4 is enclosed herewith for information, guidance and necessary action.

(Issued from C.No.IV/16/943/2006 S.Tax)

Sd./-
(VASA SESHAGIRI RAO)
ADDITIONAL COMMISSIONER (T).

To
The Mailing list - III.

Copy of Service Tax Circular No.100/3/2008-ST dt. 12-3-2008 issued **F.No. 137/102/2006-CX.4** is reproduced below.

Sub: Guidelines in respect of publication of names under section 73D of the Finance Act, 1994-reg.

Attention is invited to the provisions of section 73 D of the Finance Act, 1994. This section empowers the Central Government to publish information relating to the names of the assesseees or any other particulars relating to any proceedings under the Finance Act, 1994 in respect of such persons, in the manner as may be prescribed, if it is considered necessary and expedient in the public interest to do so. However, adequate restriction has been provided so that the particulars in relation to any penalty are not published until the time for presenting an appeal has expired without an appeal having been presented or the appeal, if presented, has been disposed of. The names of the partners of a firm, directors, managing agents, secretaries and treasurers or managers of the company or the members of the association can be published if the circumstances of the case justify it. This provision is in line with the similar provisions existing in section 37 E of the Central Excise Act, 1944.

2. To bring into effect the provisions of said section, the Service Tax (Publication of Names) Rules, 2008 have been prescribed vide notification No. 15/2008-ST, dated 1.3.2008.

3. Since, the power to publish names or other particulars of proceedings, is with the Central Government, following guidelines are laid down regarding the type of cases to be covered, and the manner/procedure of such publication under section 73D read with the Service Tax (Publication of Names) Rules, 2008;

(i)	Publication of information would be resorted to only in respect of offence cases wherein the service tax liability is Rs. 1 crore or more. However, in cases of repeat offences, and in cases involving collection of an amount representing tax, not deposited, to the Central Government under section 73A of the Finance Act, 1994, the tax liability limit would be Rs.25 lakh.
(ii)	The cases should have material evidence to show that fraud, collusion, wilful mis-statement or suppression of facts has been committed with intent to evade payment of tax /duty.
(iii)	Such publication of information should be necessary or expedient in public interest.
(iv)	In case, of publication of information pertaining to penalty, the same should be done only after the period for filing appeal before the Commissioner (Appeals) or CESTAT is either over or such appeal has been disposed of.
(v)	In case publication relates to association of persons (i.e. firm, company etc.), the names of their officials (like partners, directors) can also be published if there are justifying circumstances for doing so.
(vi)	The jurisdictional Commissioners or the ADGs of DGCEI zonal units should send the proposal giving full details of the nature of offence, amount of tax, credit, refund or rebate involved and role played by each person whose name or other particulars are proposed to be published, to the Chief Commissioner or the Director General of Central Excise Intelligence as the case may be.
(vii)	The Chief Commissioner or the Director General of Central Excise Intelligence, as the case may be, should examine the proposal and within fifteen days forward the same with his or her comments giving justification for its publication to the Committee that has been set up by the Board in this regard. The Chief Commissioner (TAR) will be the convenor of the committee comprising of Director General (DGRI) and the Director General (DGCEI). This committee will scrutinize all the proposals and send its recommendations to Member (CX & ST) within 30 days of receipt of the proposal. Thereafter, the Central Board of Excise and Customs may recommend the publication of such names to the Central Government.
(ix)	The Board, on receipt of approval of the Central Government, will communicate the same to the concerned Chief Commissioner or Director General, as the case may be, for taking necessary action. The publication of names may be made in the print media, electronic or any other media of mass communication.

4. It is, however, clarified that these provisions are stringent in nature and may affect the reputation of a person. Therefore, these should be used sparingly, with due care and caution. At the same time, it has also to be ensured that in deserving cases, they are, in fact, used and that there is no arbitrary selection in their implementation.

Yours faithfully,
Sd/-
(Gautam Bhattacharya)
Commissioner (ST)