

Circular No. 196/06/2016-ST
F.No. 137/15/2015-Service Tax
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Service Tax Wing)

New Delhi, the 27th July, 2016

To

All Principal Chief Commissioners of Central Excise and Service Tax/ Customs

All Chief Commissioners, Central Excise and Service Tax / Customs.

Principal Directors General of Goods & Service Tax/ Systems/ Central Excise Intelligence.

Director General of Audit/ Tax Payer Services

All Principal Commissioners/ Commissioners of Central Excise & Service Tax

All Commissioners of Central Excise (Audit) / Service Tax (Audit), Principal Commissioners/ Commissioners LTU, Joint Secretary TRU-I/TRU-II/Review, Commissioner, Central Excise (Legal/PAC, Tax Payers Services)

Madam/Sir

Subject: Instructions regarding provisional attachment of property under Section 73C of the Finance Act, 1994.

I am directed to draw your attention to Section 73C of the Finance Act, 1994, the Service Tax (Provisional Attachment of Property) Rules, 2008 and Circular No. 103/06/2008-Service Tax dated 1.7.2008 on the above subject.

2. Recently, in a case of an assessee whose bank accounts were ordered to be attached without giving any opportunity to them, the Hon'ble Allahabad High Court after a detailed analysis of the legal provisions, observed, inter- alia, that the order directing attachment of the property without waiting for a reply to the show cause notice, and without giving any opportunity and without giving any notice, was in gross violation of Rule 3 of the Rules of 2008 read with paragraph 2 (iii) of the Circular dated 1st July, 2008. It was mandatory for the authority to issue a notice giving 15 days time to reply before attaching a property. The Hon'ble High Court further observed that since proceedings under Section 73 of the Act had been initiated and a show cause notice had already been issued to the

petitioner, action for attachment could only have been initiated by the Commissioner and should not have been initiated by the Deputy Commissioner. The Court also directed that a certified copy of the order be sent to the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance with specific instructions to issue a circular to all officers ensuring that the powers under Rule 3 should be exercised with utmost care and caution and should not be exercised frivolously.

3. It may be noted that, on this issue, there are adequate safeguards in the law and same have been highlighted in the Circular dated 1.7.2008. The present situation has resulted only on account of non-compliance with respect to both. Chief Commissioners are requested to issue standing orders with respect to the observations of the Hon'ble Allahabad High Court and to also emphasize that non-compliance with legal provisions or administrative instructions will leave officers with no defence in legal proceedings arising out of such non-compliance.

Yours faithfully

Sreeparvathy S.L.

OSD (Service Tax)