

Service Tax (Provisional Attachment of Property) Rules, 2008 [Notification No. 30/2008-S.T., dated 01-07-2008]

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:-

Rule 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.

Rule 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.

Rule 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.

Rule 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.

Rule 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.

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)