

**F. No. 201/51/2004-CX-6
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi**

Circular No. 849/07/2007-CX

Dated 19th April, 2007

Guidelines in respect of publication of names under Section 37E of the Central Excise Act, 1944.

Attention is invited to the Taxation Laws (Amendment) Act, 2006 wherein Section 37E has been inserted in the Central Excise Act, 1944. This provision empowers the Central Government to publish information relating to the names of the assesseees or any other particulars relating to any proceedings or prosecution under the Central Excise Act, 1944 in respect of such persons, 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 287 of the Income Tax Act, 1961.

2. Since the power to publish names or particulars of proceedings, etc., is with the Central Government, following guidelines are laid down regarding the type of cases to be covered in Section 37E of the Central Excise Act, 1944 and the manner/procedure for publication of names;

- (i) Publication of information would be resorted to only in respect of offence cases wherein the excise duty liability is Rs. 1 Crore or more. However, in cases of repeat offences, and in cases involving collection of an amount representing duty/tax but not deposited to the Central Government under Sections 11D of Central Excise Act, 1944, the duty liability limit would be Rs. 25 lakhs.
- (ii) The cases should have material evidence to show that fraud, collusion, wilful mis-statement or suppression of facts has been committed with an intent to evade payment of duty/tax.
- (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 Commissioner or the ADGs of DGCEI zonal units should send the proposal giving full details of the nature of offence, amount of duty, 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 (Central Excise Intelligence), as the case may be, should examine the proposal and 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 Director General (DGRI) and the Director General (DGCEI). This committee will scrutinize all the proposals



and send its recommendations to Member (Central Excise) 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.

3. 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, infact used, and that there is no arbitrary selection in their implementation.

Sd/-

(RAHUL NANGARE)

Under Secretary to the Government of India
