

LETHAL LIBEL

(S. Jaikumar, Swamy Associates)

"An eye for an eye and an axe for a tax"

Our beloved portal, Tax India online, has a bouquet of distinguished columns like DDT, Cob (web), Guest column, Special column, TIOL Exclusive, etc. I hope, soon there could be another column called as "Evader's column" and the reason for the same could well be the lethal Section 37E of the Central Excise Act, 1944 followed by the latest Circular No: 849/07/2007-CX, dt 19/4/07.

A recap. Hope all netizens remember the Taxation (C) Laws (Amendment) Act, 2006, whereby the Government, *interalia* various draconian proposals, had proposed to insert a new Section 37E to the Central Excise Act! Through this draconian Section, the Central Government was empowered to publish the names of the any person and any other particulars relating to any proceedings or prosecution under the Excise Act, in respect of such person, in such manner as it thinks fit. An Explanation was also proposed to this vindictive Section, which explains that, in case of a firm / company / association of persons then such publication would include the name of the partners, directors, managing agents, secretaries and treasurers, managers of the Company or the members of such association. The said Section also provided for an exclusion from publication, cases relating to any penalty imposed under the Excise Act, until the time of presenting an appeal to the Commissioner (Appeals) or an appeal to the Hon'ble Tribunal, as the case may be, and in cases where such appeal is presented, the time till such appeal has been disposed off. By this Section, the Revenue shall publicize the name of the person / persons, during the any stage of proceeding except during the appeal period mentioned in Sub-Section (2) of this proposed Section. Even the Sub-Section (2), excludes such publication only till the time of filing / disposal of an appeal before the Commissioner (Appeals) / Hon'ble Tribunal. In fine, as per this Section, the Revenue can publicize the names and particulars at any stage starting from the stage of issuance of Show Cause Notice, adjudication, appeals to the Revisionary authorities, appeals to the High Court and appeals to the Supreme Court.

This shameful proposition, whereby, the Revenue wanted to barge inside the human rights of an individual was enacted without much uproar and here comes the present Circular, prescribing the mode of hanging! As per this present Circular, *supra*:

- Publication of information would be resorted to, only in respect of offence cases, wherein, the excise duty liability is Rs.1 Crore or more.
- In cases of repeat offences and in cases under Sections 11D of Central Excise Act, 1944, the duty liability limit would be Rs.25 lakhs.
- The cases should have material evidence to show that fraud, collusion, willful mis-statement or suppression of facts has been committed with intent to evade payment of duty/tax.
- 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.
- 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.
- 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.
- 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.
- Such Committee shall scrutinize all the proposals and send its recommendations to Member (Central Excise) within 30 days of receipt of the proposal and thereafter the Board may recommend the publication of such names to the Central Government.
- 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.

Tell me dear netizens, as to whether, toady, is there any case booked by DGCEI is less than a Crore? Irrespective of the fact that, ultimately they survive for an amount not more than four digits, the premier investigation agency issues the notice, not less than seven digits! These notices based on astronomical guesstimates are enough for the Revenue, to invoke the above Section and make you popular!

Further, as per this cruel Section, various persons including secretaries, treasurers and managers of the company are made vulnerable to this **"Most Wanted"** list! As this Section provides for publication of the names, in any manner, at any stage of the proceeding, there is every likelihood that the Revenue shall misuse this provision to coerce the victims, to suit their designs, at the time of investigation itself! As per the above Circular, the publications are based on the recommendations of the Director General of Central Excise Intelligence, who himself is the head of the Investigation agency! That being the case, can anyone expect any amount of fairness in their recommendations? Imagine the irreparable injury that could be caused to a person, due to such malign publication, without any conclusive proof or determination. Ultimately, if the case is decided in favour of the assessee, who will redeem the loss of his face in the society and loss of goodwill in the market?

Before Parting...

With the advent of the draconian Notification 32/2006-NT, whereby the Revenue was empowered to impose certain restrictions on CENVAT availment and monthly payment facilities, we all witnessed full page advertisements given in all dailies reading "Alert No.1!" Today the Notification is challenged in every High Court and already the Hon'ble High Courts of Madras and Andhra Pradesh have stayed the operation of the said Notification and the writ appeal has been admitted in the Hon'ble high Court of Karnataka, for want of legality. If Notification 32/2006-NT has made me to learn Constitutional law, I am sure that, this present Circular is going to help me in handling defamation suits!