

- Renting of Immovable Property

TAX

The Honorable Delhi HC, while deciding the Writ Petition No. 3398 / 2010 dated 18.05.2010, has granted a stay from recovery of Service Tax under the newly amended taxing entry of "Renting of Immovable Property service", which amendment was made retrospective w.e.f. 01.06.2007 by the Finance act, 2010. This stay order has considered the decision of the Division Bench of Delhi High Court in Home Solutions Retail India Ltd. & Ors. v. Union of India [2009 (237) ELT 209 (Del.)], wherein it was held that real estate by itself cannot, by any stretch of imagination, be regarded as a 'service'. It was also observed that renting of property by itself did not entail any value addition, and therefore, could not be regarded as a 'service'.

The Hon'ble Delhi High Court, while granting the stay on the enforcement of the amended taxing entry of "Renting of Immovable Property service", has stated as under:

"Prima facie, it appears that renting of immovable property itself has been regarded as a service by virtue of the recent amendment even though this Court by virtue of the said decision on 18.04.2009 had categorically concluded that renting of immovable property by itself cannot be regarded as a service."

Another issue that still remains open is the legislative competence of the Parliament to charge tax on immovable properties in the context of Entry 49 of List II of the Constitution of India, which empowers the State Government to tax land and buildings. The Hon'ble Delhi High Court in its Order dated 18.04.2009 did not decide on the alternative submission with regard to that issue. This aspect has also not been considered in the Stay Order dated 18.05.2010.

Background:

The Finance Act, 2007 had introduced the taxing entry of “Renting of Immovable Property service” w.e.f. 01.06.2007. The Taxable service, as introduced, was defined under Section 65(105)(zzzz) as under:

“(zzzz) to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce...”

Many writ petitions were filed challenging the levy on the following grounds:

- (a) Merely allowing use of land or building does not tantamount to provision of a service.
- (b) The levy of Service tax under the said taxing entry is on a service provided along with the renting of immovable property and not on renting per se.
- (c) Levy of Service tax on “Renting of Immovable Property” tantamount to levy of tax on land / buildings. The Central Government does not have the right to levy tax on land / buildings as the same falls within the State List (List II 49)

The Hon’ble Delhi High Court in , Home Solutions Retail India Ltd & Ors v. Union of India [2009 (237) ELT 209 (Del.)], held that the renting of immovable property for use in the course or furtherance of business of commerce by itself does not entail any value addition and, therefore, cannot be regarded as a service. Of course, if there is some other service, such as air conditioning service provided along with the renting of immovable property, then it would fall within Section 65(105)(zzzz).

The Finance Bill, 2010 had proposed to amend the taxing entry of “Renting of Immovable Property services” with retrospective effect from 01.06.2007, inter alia, as under:

“to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce.”;

The Tax Research Unit of the Central Board of Excise and Customs in Circular dated 26.02.2010 has, inter alia, clarified as under:

“Amendments are being made in the definition of the taxable service ‘Renting of immovable property’ [section 65 (105) (zzzz)] to (i) provide explicitly that the activity of ‘renting’ itself is a taxable service. This change is being given retrospective effect from 01.06.2007; and (ii) ...”

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