

Update on Renting & Service Tax

ASG Mr. Vivek Tankha's letter to FM, circulated under **Letter F.No.276/282/2010-CX.8A** by CBEC, **(given below again for our new subscribers)** has confused many a landlord who are pressing the tenants to pay up the Service Tax on renting.

Excerpts:

2. The Ld. ASG has opined ...He has advised that applications may be moved before all the High Courts in India for vacation of interim direction issued in favour of the petitioners.

3. In view of the above, necessary action for filing of applications for vacation of interim directions issued in favour of petitioners by various High Courts may please be taken expeditiously.”

Fact remains that despite the subject letter, neither the Union of India nor most of the jurisdictional Commissioners of Service Tax have proceeded yet to get the interim orders vacated. Therefore, these still remain valid for all other petitioners, except M/s. Home Solutions Retail Pvt. Ltd. whose stay was vacated by Supreme Court.

Another point: This is merely an advisory communication to field formations by CBEC, and not a Notification, as interpreted by some landlords who are warning tenants of disconnecting electricity for other coercive measures.

Admittedly, the background facts are that (a) P& H High Court has decide the case in favour of the Govt. (b) Hon'ble Supreme Court has stayed the order of the Delhi High Court staying the order in the case of M/s. Home Retail Solutions, (c) ASG Tankha's above advisory; and (d) Vacation of stay of some tenants by Karnataka High Court, as argued by Mr. BN Gururaj, Advocate. (See his affidavit that unsettled a majority of the writs filed by tenants)

Having said that some other facts need also to be discussed. Some lawyers for reasons best known to them, have gone around filing multiple writ petitions for same clients in different High Courts, even though other High Courts have granted them stay for all premises wherever in India. Take the case of Hon'ble Delhi High Court, which has granted stay for premises falling outside its territorial jurisdiction. There is however a valid reason. It has qualified that: Either the property should be located in Delhi or (b) the petitioner be assessed to Service tax in Delhi .

This effectively covers such assesses who obtained simple or Centralised Registration in Delhi . Now Commissionerate of Service Tax, Delhi encompasses the territory of UT of Delhi , as well as, the entire state of Haryana.

A large number of commercial and industrial establishments are in Gurgaon. Landlords in Haryana are a confused lot. P&H High Court has territorial jurisdiction on Haryana. But Delhi Service Tax Commissionerate is located in Delhi . Which High Court's orders will prevail in Haryana?

Moreover, the fact of stay having been granted to one entity can not be interpreted as having been granted to all others in the same community. It is valid for only those who approached the Courts and were granted such similar interim orders. In the same manner, vacation of stay in the case of one party is also not tantamount to vacation of stay orders in all other cases.

This matter was definitely orally raised by the Sr. CGSC Mr. Mukesh Anand before the DHC on 25.1.2011. The Court merely directed it to be placed on record. After the orders of Supreme Court, neither any fresh stay has been granted to new petitioners nor has it been vacated in the cases of old petitioners. No such orders have been passed by DHC.

Infact, the regular hearings in the matter are being conducted on the directions of Supreme Court. The next hearing is slated today, the 21st of March, 2011. The submissions from the side of Petitioner's is nearing its end and the Union of India is expected to respond on that day. It is likely that the case may be reserved for final orders today or during the next hearing (in case it is continued for another date).

All interim orders will extinguish the day the final judgment / order is pronounced in this case which may take place sometime thereafter. Whichever way the case is decided, next cause of action will arise only from the day the final order is pronounced.

It is noteworthy that assesses or litigants in Delhi Commissionerate have not received any directions from the other respondents (UOI and CST, Delhi for instance). They seem to have adopted a wait and watch policy. There are two reasons. First, that the matter is nearing culmination and no meaningful objective would be achieved by moving in haste. Second that most IRS officers will be busy for the coming month as they are being deputed on election duty in the forthcoming state elections.

The frequent coming and going from their offices to the constituencies means the administration will come to a near halt so far as leadership is concerned.

In the meantime, Delhi High Court too is expected to pronounce it's final order. This will have to be more exhaustive than the previous one in 2009, which had skipped the major issue of constitutionality – whether it is a state subject on which centre can not legislate.

Therefore, heat is expected to be generated towards the second half of April, more so if Govt. wins this round.

In the meantime, Chandigarh Commissionerate is on an overdrive passing adjudication orders imposing 100% penalty u/s 76. Assessees are running around contacting consultants and lawyers to file appeal.

Let us keep our fingers crossed. It is said that nearly Rs.35, 000 crores is riding on this category

F. No.276/282/2010-CX.8A

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Custom

New Delhi

Dated: February 24, 2011

**Subject: SLP (C) CC No.16960/2010 - UOI & Ors Vs Home Solutions Retails India-
Service tax on renting of immovable property - reg.**

Please find enclosed a copy of letter from Ld. Additional Solicitor General of India , Shri Vivek Tankha on the above subject. In this context attention is invited to this office letter of even number dated 14.1.2011 (copy enclosed).

2. The above stated matter came up for hearing before the Supreme Court on 4.2.2011. The Hon'ble Supreme Court has passed an order to the effect that the High Court of Delhi will hear and dispose of all the writ petitions as expeditiously as possible. Further, the Supreme Court has ordered that the interim order which was passed by the Supreme Court on 10.1.2011 would continue to operate till the disposal of the writ petitions in the High Court. In effect, the interim order, dated 18.5.2010, passed by the Delhi High Court (post amendments), staying the levy of service tax on renting of immovable property has

been nullified. Subsequent to the interim order of Delhi High Court, dated 18.5.2010, a large number of orders were passed by various High Courts, staying the levy of service tax on renting of immovable property till final disposal of WPs.

3. The Ld. ASG has opined that the Union of India is now legally empowered, in view of the Supreme Court order, as mentioned above, to collect service tax on commercial properties until the final judgement of the High Court of Delhi in the post amendments scenario. He has advised that applications may be moved before all the High Courts in India for vacation of interim direction issued in favour of petitioners.

4. In view of the above, necessary action for filing of application for vacation of interim directions issued in favour of petitioners by various High Courts may please be taken expeditiously. Further, necessary steps for collection of pending service tax may also be taken.

(G .D Lohani)

Director (Legal)