

STax on Renting of Immovable Properties- AP High Court stays retrospective amendment

TRENT Ltd and Future Value Retail Ltd have challenged before the AP High Court, the service tax with retrospective effect on renting of immovable property, brought in by the Finance Act, 2010.

The prayer in the Writ petition reads as,

To issue a Writ order or direction one more particularly in the nature of Writ of Mandamus

- a) Declare the impugned provisions, viz. section 65(90a) read with Section 65(105)(zzzz) of the Finance Act, 1994 as amended by the Finance Act, 2008 and Finance Act 2010 as null and void and ultra vires the Constitution of India and/ or section 66 of the Finance Act and /or be strike down the said provisions as illegal, arbitrary and violative of Articles 14, 246 and 265 of the constitution of India;
- b) Issue a Writ order or direction in the nature of Certiorari or any other Writ, order or direction of like nature, setting aside Section 75(5)(h) and Section 76 of the Finance Act 2010;
- c) Declare the Notification no. 24/2007 dt. 22nd May 2007 and Circular No. 98/1/2008-ST dt. 4-1-2008 as revived by Finance Act 2010 issued by the Respondent No.1 as illegal, null and void and ultra vires the provisions of the Finance Act 1994 as amended by the Finance Act 2007 and Finance Act 2008 and Finance Act 2010
- d) Issue a Writ of Mandamus or a Writ in the nature of Writ of Mandamus or any other appropriate Writ order or direction restraining the respondents by their servants agents and subordinates from directly or indirectly giving effect to or acting upon the impugned Notifications or impugned circulars or collecting any taxes on the basis of Section 65(90a) 65(105)(zzzz) read with Section 66 as amended by Finance Act 2010 and provided retrospective operation on and from 1-6-2007.
- e) Issue a Writ of Mandamus or a Writ in the nature of Writ of Mandamus or any other appropriate Writ order or direction restraining the respondents by their servants agents and subordinates from directly or indirectly giving effect to or acting upon the Section 65(90a) 65(105)(zzzz) read with Section 66 as amended by Finance Act 1994 as amended by Finance Act 2007 and Finance Act 2008 and Finance Act 2010 as stated hereinabove;

The petitioner also filed an injunction petition seeking

to restrain the respondents their servants, officers and agents from in any manner whatsoever giving effect to directly or indirectly or acting upon Notification 24/2007 dt. 22nd May 2007 and Circular No. 98/1/2008-SAT dt. 4-1-2008 as revived by Finance Act 2010 or levying or collecting any taxes on the basis that Section 65(90a), Section 65(105)(zzzz) read with section 66 Finance Act, 1994 and recovering any service tax on renting of immovable property from the petitioner pending disposal of the above Writ petition.

And it appears that the High Court has granted the interim injunction. DDT spoke to Mr. Niranjana, the Advocate appearing for the petitioner and he confirmed that the High Court has granted the interim injunction.

IN THE HIGH COURT OF ANDHRA PRADESH

AT HYDERABAD

WPMP No. 15963 of 2010 in
WP No. 12681 of 2010

TRENT LIMITED

Vs

UNION OF INDIA

- 2) THE DIRECTOR GENERAL OF SERVICE TAX
3) MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, GOVERNMENT OF
INDIA
4) THE CENTRAL BOARD OF EXCISE AND CUSTOMS

Goda Raghuram and Noushad Ali, JJ

Dated: June 7, 2010

Appellant Rep by: Sri S Niranjana Reddy
Respondent Rep by: Sri A Rajasekhara Reddy, SC

Service tax – Renting of immovable property – Retrospective amendment stayed

JUDGEMENT

In the writ petition Section 65 (90a) read with Section 65 (105) (zzzz) of the Finance Act, 1994, as amended by the Finance Act, 2007, Finance Act, 2008 and Finance Act, 2010 are impeached, inter alia as inconsistent with the provisions of Articles 14, 246 and 265 of the Constitution of India.

The petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is in the business inter alia of running retail stores by taking shops/premises on rent or on licence. It is principally aggrieved by the provisions of Section 66 (105) (ZZZZ) as amended by the Finance Act, 2010, whereby inter alia the renting of immovable property is brought within the ambit of a service and made liable to tax under the provisions of the service tax matrix of the Finance Act, 1994, as now amended.

Sri S.Niranjan Reddy, learned counsel for the petitioner, would urge several contentions to buttress the grounds of challenge to the impugned provisions, including that the renting of immovable property per se would not constitute any value addition falling within the lubric of service and that the provisions of Section 65 (105) (zzzz) are inconsistent with the ratio legis of the service tax provisions of the Finance Act, 1994. Alternatively, it is contended that the Parliament does not have legislative competence to levy service tax by an artificial expansion of the concept of service so as to entrench into the core of the legislative power of the state under entry 49 of List II of VII Schedule to the Constitution of India which reads "Taxes on lands and buildings". It is also contended on behalf of the petitioners that a learned Division Bench of the Delhi High Court in the judgment dated 18/04/2009 in Home Solution Retail India Ltd., V. Union of India and others in W.P.(C) No.1659 of 2008 and batch had observed inter alia (while interpreting the provisions of Section 65 (105) (zzzz), as these provisions stood prior to the amendment by the Finance Act, 2010), that the renting of immovable property for use in the course of or furtherance of business of commerce by itself cannot constitute service; and therefore, the legislative dynamics qua the provisions of the Finance Act, 2010, would not be a valid exercise as a validating legislation to remove the substratum of the ratio of the judgment of the Delhi High Court. Sri Niranjan Reddy would also contend that the provisions of Section 65 (105) (zzzz) have been given retrospective efficacy qua Section 77 of the Finance Act, 2010 by purporting to be in the nature of validation of action taken under sub-clause (zzzz) of clause (105) of Section 65 and that such retrospective operationalisation of a taxing provision is arbitrary, independent of the question whether the Parliament had the legislative competence to enact Section 65 (105) (zzzz) as enacted in the Finance Act, 2010.

The generic contentions urged on behalf of the petitioner, briefly adverted to above, are eminently arguable though we are not prima-facie satisfied to an extent warranting interdiction of the operation of the provisions of Section 65 (105) (zzzz) in so far as their prospective application is concerned. The challenge as to the retrospectivity of the provisions, in our considered view and prima-facie is on more substantial grounds.

On the prima-facie analysis above, the respondents are directed, pending further orders in this application or in the writ petition, not to initiate any coercive steps for recovery of the service tax on the renting of immovable property by the petitioners, on the basis of the provisions of Section 65 (105) (zzzz) as amended by the Finance Act, 2010, for the period 01/06/2007 to 01/04/2010. Petitioner shall, however, be liable to pay the applicable service tax as per the provisions of Section 65 (105) {zzzz}, for the period subsequent to 01/04/2010 but subject to the result of the writ petition, notice.