

DETER – RENT

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The Union Finance Minister has presented the Budget for 2010. The Finance Minister did not discuss the changes in Service tax front elaborately in the parliament in his Budget speech. The changes made in service tax are many, including certain changes made in expanding the scope of the existing services. Most significant one is the change made to the taxable services under the category 'Renting of immovable property'. This change has been made with retrospective effect.

The Service tax on renting of immovable properties was introduced effective from 1.6.2007, at the time of introduction the definition of taxable service under Section 65(105)(zzzz) read as **any service provided or to be provided 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'**

The meaning "immovable property" was given by way of an Explanation. From the definition of taxable service, it was clear that the services in relation to renting of immovable property for use in the course of furtherance of business or commerce, was liable to levy of service tax. But it was understood by the officers of the department and general public that the levy was on the activity of renting of immovable property. The Honorable High Court of Delhi in the case of Home Solutions Retail India Ltd., reported in 2009 (237) ELT 209 (Del.) held that services in relation to Renting of Immovable Property is taxable and the activity of Renting of Immovable Property is not liable to Service tax. The Department has filed an appeal against this order to Honorable Supreme Court and the appeal is pending disposal.

The effect of the said decision has directly fallen on the provider of taxable service since the recipient of the service, in most of the cases have stopped paying service tax, in view of the aforesaid decision. The provider of the service was in a dilemma since he was exposed to the risk of interest and the penalty in case the issue is decided by the Supreme Court in favour of revenue. The department was also issuing protective demands.

The revenue has realized the mistake in the definition and in the present finance bill it seeks to substitute the definition of taxable service under Section 65 (105) (zzzz). The substitution provides explicitly that the activity of renting itself is a taxable service, and the change is proposed to be made effective from 01.06.2007. The new definition reads as follows.

"to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use"

The Revenue has come up with an explanation for the changes proposed. It said to be clarificatory in nature, but in effect proposes to levy tax on the activity of renting which was not part of the taxable services in the erstwhile definition. Further it seeks to levy service tax on the activity of renting of vacant land given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business.' It is pertinent to note that such vacant land was not forming part of definition of "immovable property" as per the explanation to taxable service.

Now the changes made above, which would be effective from the date the Finance Bill gets the assent of the President of India, would enable the department to levy service Tax on the renting of immovable properties from 01.06.2007 and all the registered service providers who have not discharged the service tax will be made to pay service tax along with interest. Further the department would also now look for those vacant lands which were leased or with an agreement for structure to be build at a later stage, and start issuing demand, thereby enriching only one community the advocates and consultants.

Before parting...

The provider of the service is exposed to litigations perpetually, with the recipient of the service as well as the department, and the un-intended liability towards interest and penalty for the mistake on the part of the law makers who were not meticulous at the first instance in clearly bringing out legislative intent while drafting, but are over enthusiastic to safe guard the revenue. Whatever could the intentions of this

change, there seems to be no end for the litigations. The change would also breed now litigations with reference to this new levy in the guise of clarifications and the fate of land lords would be really uncertain. In all fairness the amendments should have been prospective.