

## Service Tax on Construction of Complex Services Upheld

## The Lending Norms for Housing Finance Tightened

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## Service Tax on Construction of Complex Services Upheld

The High Court of Punjab and Haryana (“PHC”) has upheld the levy of service tax on construction of complex services. Last month, the PHC had upset a number of tenant petitioners by upholding validity of service tax on commercial rentals. The recent judgment comes as a second lease on life to the revenue, which has otherwise been having a difficult time before many other high courts in India in justifying levy of service tax on transactions which per se do not appear to involve an element of service.

In the present case, M/s. G.S. Promoters (“GSP”) which is engaged in the business of development and sale of residential flats sought declaration that the explanation (added by the Finance Act, 2010) to Section 65(zzzh) of the Finance Act, 1994 (“Act”) and CBEC Circular No. 334/3/2010-TRU dated 1 July 2010 (“Circular”) are unconstitutional. GSP contended that the said explanation has widened the scope of levy beyond the concept of service by including sale therein. GSP further contended that taxing of sale and purchase was beyond the legislative competence of the Union Legislature.

The PHC, in its judgment delivered earlier this month, has observed that the levy of tax is on service and not on service provider and construction services are certainly provided even when a constructed flat is sold. Taxing of such transaction is not outside the purview of the Union Legislature as the same does not fall in any of the taxing entries of the State List. The PHC refused to accept the contention of GSP that there is no element of service of construction involved in a builder selling a flat. The PHC observed that whether or not service is involved has to be seen not only from the point of view of the builder but also from the point of view of the service recipient.

So far as the question of legislative competence of the Union Legislature was concerned, the PHC held that no argument was raised by GSP that there was any encroachment on the power of the State Legislature except that the levy under challenge was on the element of sale. Accordingly, the PHC held that in the absence of any encroachment in the field of the State Legislature by the Union, the impugned levy cannot be held to be beyond legislative competence.

While relying on number of judgments, the PHC maintained its view that service in relation to construction is sought to be taxed and service is certainly involved even when construction is carried out or got carried out before construction and before flat is sold.

It would now be interesting to see the view of the other High Court(s) across India where similar writ petition(s) challenging the constitutional validity of the above explanation are pending and the interim stay has been granted in favour of the petitioners.

## The Lending Norms For Housing Finance Tightened

The National Housing Bank (“NHB”) has mandated that housing finance companies (“HFC”) shall make greater provisions for loans extended to companies and builders and reduce the amount that an individual can borrow against property.

The new norms have capped the amount which an individual can borrow against property. In case the value of the property is less than 20 lakh rupees, an individual can borrow 90% of the value of the property. All other loans against property have been capped at 80% of the property's value.

The new norms also require the HFC to keep a provision of 0.4% of the total outstanding loans by September 2011. This would apply to all loans other than individual housing loans as NHB wants HFC to build up adequate capital reserves for the sector, which is more unstable and prone to risk.

The norms also mandate a risk weight of 125% for new home loans above 75 lakh rupees. The NHB has also directed HFC to maintain a 2% provision on teaser loans. This includes any other loan with special rates, where the interest rate is low in the first few years.