

Service Tax on Commercial Rentals – A Twist in the Tale

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The protracted legal battle between the Government and the tenants/landlords of the commercial properties across India has witnessed some significant developments during the last couple of weeks.

By the order dated November 19, 2010, the Supreme Court of India (“SC”) requested the Delhi High Court (“DHC”) to dispose of the writ petitions pending before it, pursuant to the assurance of the Government and the respondents that they would make efforts to get the matter disposed of at the next hearing before the DHC – i.e. on December 14, 2010. This order was passed in an appeal preferred by the Government before the SC against an interim order passed by the DHC earlier this year, whereby the DHC has stayed recovery of the service tax by the Government pending disposal of the writ petition by the DHC. Similar orders have since been passed by the DHC in many other writ petitions.

After the aforesaid order of the SC, it was expected that the DHC would soon dispose of the writ petitions pending before it.

Meanwhile, the High Court of Punjab & Haryana (“PHC”) has on November 22, 2010 ruled in favour of the Government, observing that renting of property for commercial purposes is certainly a service, and has value for the service receiver.

Currently the writ petitions before the High Courts are part of the second round of litigation between the Government and the tenants/landlords of the commercial properties. In the earlier round, the DHC was the first one to give a final judgment, ruling against the Government. The DHC had observed that service tax is a value added tax, and in absence of value addition in pure renting arrangements, no service tax can be levied.

After the DHC judgment, the relevant provisions in the Finance Act were amended, to include the activity of renting itself within the ambit of service tax. Writ petitions were again filed before various High Courts in different states, including before the DHC and PHC, and a few High Courts granted interim protection to the tenants/landlords from recovery of service tax on commercial rentals.

In the current round of litigation, the PHC has been the first High Court to decide on the matter. The judgment of the PHC, arguably, appears to be at variance with the earlier judgment of the DHC on certain observations.

It would be interesting to see how the DHC deals with the judgment of the PHC, while disposing of the writ petitions pursuant to the recent request for early disposal by the SC. Similar writ petitions are also pending before many other High Courts across India, and are at various stages of hearing and disposal. The order of the PHC is likely to be used by the Government before all High Courts, in support of their case.

Meanwhile, the SC may, based on the merits, admit any special leave petition against the judgment of the PHC. In such an event, the High Courts may wait for the final determination by the SC, to accordingly dispose of the writ petitions pending before them.

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The developments have nevertheless thrown open theoretical possibilities of different High Courts arriving at different answers to essentially the same questions of law. In case of difference in opinion of the High Courts, SC would eventually have to conclude the determination.