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DSK Legal Knowledge Center

Updates on  
• Tax

## TAX

### A. Delhi High Court on Service Tax on Services in relation to Renting of Immovable Property

Home Solution Retail India Ltd. and Ors

Vs

Union of India and Ors

Issue:

Whether the Notification No. 24/2007 dated 22/05/2007 and Circular No. 98/1/2008-ST dated 04/01/2008 issued by the Finance Ministry, wherein service tax was implied to be payable on the 'renting of immovable property' as opposed to 'a service

provided in relation to the renting of immovable property', are legally valid.

Background:

- The Central Government, vide the Finance Act, 2007, levied service tax on any services provided or to be provided to any person by any other person in relation to renting of immovable property for use in the course of furtherance of business or commerce.
- Notification No. 24/2007 dated 22/05/2007 laid down and Circular No. 98/1/2008-ST dated 04/01/2008 clarified that service tax was leviable on the 'renting of immovable

property' as opposed to 'services provided in relation to the renting of immovable property'.

- The landlords/ tenants challenged the legality, validity and vires of Notification No. 24/2007 dated 22/05/2007 and Circular No. 98/1/2008-ST dated 04/01/2008 before Delhi High Court by filing writ petitions.

Held:

The High Court held that there was no dispute that any service connected with the renting of such immovable property would fall within the ambit of service tax and would be liable to service tax.

The Court observed that only question before the court for consideration was whether renting of immovable property by itself constituted a service and was liable to service tax. In this regard, the Court held that service tax was a value-added tax, a tax on value addition provided by a service provider. In so far as renting of immovable property for use in the course of business and commerce was concerned, it did not entail any value addition, and therefore, could not be regarded as service.

The Court also observed that if there were some other services, such as air conditioning service provided along with the renting of immovable property, then it would be a service and would be liable to service tax.

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