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## Service Tax : Rent

### Case history

As per the Finance Act 1994, as amended upto date, the service tax is levied on the rent of commercial property. ( as per clause zzzz ) . This was made effective 1.6.2007.

This law was clear, that tax is leviable on “renting of commercial property”. And accordingly many FSIA members were levying the service tax and charged from the tenants. The tenants were paying the service tax and accordingly service tax was being paid to the Govt from time to time. The tenant (if an excisable / service-taxable company) was taking modvat of the same in its own excise / service tax return.

However, many tax payers were also litigating the legislation, and challenging the decision of the Legislature itself –“whether the Govt was right in levying this tax”.

Some time ago, this matter was decided in one case by the honorable High Court of Delhi, against the Government, and this levy was held invalid. The Government appealed to the Supreme Court. However, many landlords stopped charging the service tax on the rent. Accordingly. Many companies also stopped paying the service tax to its landlords since mid 2009.

### Recent Budget 2010

The recent Budget 2010, chapter V, has again made the position back to earlier position. And this time the law has said

(h) in sub-clause (zzzz),—

been substituted with effect from the 1st day of June, 2007, namely:—

“to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce.”;

(ii) in Explanation 1, after item (iv), the following item shall be inserted, namely:—

“(v) 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 or commerce.”;

### **FSIA comment**

- **That is the law is changed with retrospective effect ( wef 1.6.2007)**

- **Service tax is leviable on rent, or property**
  - **even if it is a vacant plot**
  - **even if it is to be used “ in future” for business or commerce**

#### and further law changed as under

76. Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under sub-clause (zzzz) of clause (105) of section 65 of the Finance Act, 1994, at any time during the period commencing on and from the 1st day of June, 2007 and ending with the day, the Finance Bill, 2010 receives the assent of the President, shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in sub-clause (zzzz) of clause (105) of section 65, by sub-item (i) of item (h) of sub-clause (5) of clause (A) of section 75 of the Finance Act, 2010 had been in force at all material times and, accordingly, **notwithstanding anything contained in any judgment, decree or order of any court**, tribunal or other authority,—

(a) any action taken or anything done or omitted to be taken or done in relation to the levy and collection of service tax during the said period on the taxable service of renting of immovable property, shall be deemed to be and deemed always to have been, as validly taken or done or omitted to be done as if the said amendment had been in force at all material times;

(b) **no suit or other proceedings shall be maintained or continued in any court**, tribunal or other authority for the levy and collection of such service tax and no enforcement shall be made by any court of any decree or order relating to such action taken or anything done or omitted to be done as if the said amendment had been in force at all material times;

(c) **recovery shall be made of all such amounts of service tax, interest or penalty** or fine or other charges which may not have been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, as if the said amendment had been in force at all material times.

*Explanation.*—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this amendment not come into force.

#### FSIA Conclusion

On one hand, the budget 2010 has not yet been passed, hence these directions above are yet to get the consent of the legislature.

However, on the other hand, the intent of the Government is very very clear.

- a) Service tax is leviable
- b) It is effective 1.6.2007 ( no relaxation )
- c) All loopholes have been sought to be plugged.
- d) It will have to be paid, irrespective of any court case / decision
- e) Interest and penalty may also be levied
- f) All court cases on this ground shall be discontinued forthwith
- g) Recovery shall be made on this immediately.

#### Note on modvat

We must also keep in mind that there is ZERO tax loss to the FSIA members who are into excisable manufacturing. Reason = **The company will get 100% Modvat** of the service tax so paid, against its own excise duty.


#### Final recommendation

Hence, we recommend that

- a) FSIA members
  - a. Must pay the due service tax to its landlords,
  - b. And take modvat accordingly.
- b) The landlords
  - a. must pay it to the Government.
  - b. And file their service tax return accordingly.

**General note : on Minimum Exemption limit** : The service tax is leviable, if the total “Rent on commercial property” received by the landlord above Rs. Ten lakhs per annum.

**For queries, suggestions and feedback , you can e-mail us at :**

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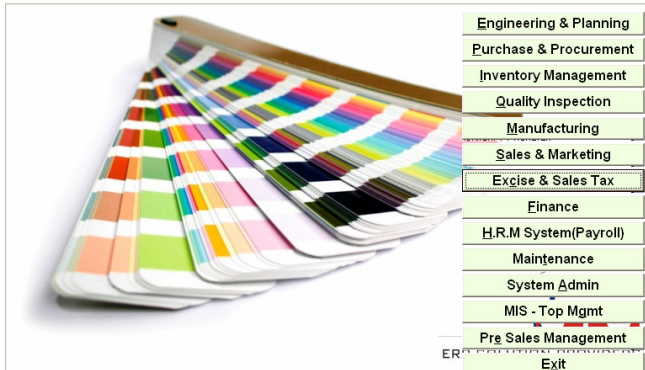
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