

Dear Sir

Please find enclosed the letter in respect of letter to the tenant for recovery of service tax on rent. Please note if you have not obtained the undertaking from the tenant, in such a case, the portion marked with red ink in the said letter is to be deleted.

Note: In case, the tenant did not give the service tax from very inception i.e. 01.06.07, then second attachment to this mail shall be the relevant letter. However, if tenant were previously paying the service tax and stopped the payment only after Home solution judgment, first attachment to this mail is relevant.

Regards,

Team

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Tenant

Date: 08.05.2010

(Address)

Subject: Recovery of Service tax on the amount of rent received for the periodto.....

Sir/Madam

1.1 This is to inform you that the Finance Bill, 2010 proposing to levy **service tax on renting per se from retrospective effect** (i.e. w.e.f. 01.06.07) **has received the assent of President on 08.05.2010.**

In other words, the decision of Delhi High Court in the case of Home Solution Retail India Limited dated 18.04.2009 wherein it was held that renting per se is not taxable has been nullified. **Thus, Service tax shall be levied on the amount of rent received in respect of renting per se also w.e.f. 01.06.2007.** Relevant extract of the said amendment is reproduced hereunder (*in italics*) for your ready reference:

“Taxable service means any service provided or to be provided to any person by any person, ***by renting of immovable property*** or *any service in relation to such renting* for use in course of or for furtherance of business or commerce”.

1.2 Since, service tax is levied on mere renting of immovable property also, therefore M/s..... (name of tenant) are required to pay the service tax amounting to Rs..... for the period fromto.....

1.3 Moreover, as per the undertaking signed by M/s.....(name of tenant) wherein it was agreed that in case leviability of service tax on renting per se gets affirmed, M/s.....(name of tenant) shall pay the amount of service tax to the landlord.

Thus, you are directed to pay the service tax amounting to Rs. in respect of the rent paid for the period fromto.....

Thanking You

For..... (name of the service provider)

(Authorized signatory)

Tenant

Date: 08.05.2010

(Address)

Subject: Recovery of Service tax on the amount of rent received for the periodto.....

Sir/Madam

1.2 This is to inform you that the Finance Bill, 2010 proposing to levy **service tax on renting per se from retrospective effect** (i.e. w.e.f. 01.06.07) **has received the assent of President on 08.05.2010.**

In other words, the decision of Delhi High Court in the case of Home Solution Retail India Limited dated 18.04.2009 wherein it was held that renting per se is not taxable has been nullified. **Thus, Service tax shall be levied on the amount of rent received in respect of renting per se also w.e.f. 01.06.2007.** Relevant extract of the said amendment is reproduced hereunder (*in italics*) for your ready reference:

“Taxable service means any service provided or to be provided to any person by any person, ***by renting of immovable property*** or *any service in relation to such renting* for use in course of or for furtherance of business or commerce”.

1.2 Since, service tax is levied on mere renting of immovable property also, therefore M/s..... (name of tenant) are required to pay the service tax amounting to Rs..... for the period fromto.....

It is pertinent to mention here that Service tax is an indirect tax and the burden of the same is to be borne by the Service recipient, therefore tenant is liable to pay the service tax on the rental services provided by the landlord.

In the case of **Tamil Nadu Kalyana Mandapam Assn. V.s Union of India & ors. 2004 (167) ELT 0003 SC = 2004 (267) ITR 0009 SC**, Hon'ble Supreme Court observed that “*Service tax is an indirect tax and is to be paid on all the services notified by the Government of India for the said purpose. The said tax is on service and not on the service provider. However under Section 68 of the Finance Act, 1994 as amended by the Finance Act 1997 read with Rule 2(1)(d)(ix) of the service Tax Rules, 1994, the service provider (in the present case the Mandap Keeper) is expected to collect the tax from the client utilizing the services*”.

Further, the Income Tax Department vide **Circular 4/2008 dated 28th April 2008** has also implied stated that the **onus to pay service tax lies on the**

tenant and TDS is to be excluded on the service tax component. Above all, service tax is an indirect tax and thus, the one utilizing the services shall be liable to pay such tax on services.

Para 3 of the circular reads as follows:

“Service tax paid by the tenant doesnt partake the nature of income of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax”.

1.3 Therefore, in view of above it is apparent that tenant is liable to pay the service tax on the rental services provided by the landlord.

1.4 Moreover, as per the undertaking signed by M/s.....(name of tenant) wherein it was agreed that in case leviability of service tax on renting per se gets affirmed, M/s.....(name of tenant) shall pay the amount of service tax to the landlord.

Thus, in view of above, you are directed to pay the service tax amounting to Rs. in respect of the rent paid for the period fromto.....

Thanking You

For..... (name of the service provider)

(Authorized signatory)