

Owners would be liable to pay tax for renting of buildings to governments

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Renting of Immovable property was brought under the Service tax net w.e.f 01/06/2007.

The renting of immovable property defined u/s 65(90a) read as follows:

“(90a) renting of immovable property service includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce.”

If rented immovable property is used for furtherance of business or commerce, it is liable to service tax. It does not matter whether Government or private parties rent it. Many Government offices like Service Tax, Central Excise, Income Tax, Accountant General Office, and State government offices have taken buildings on rent for performing the respective functions. Hitherto, the government offices in rented buildings were claiming that service tax is not payable as their activities were not in furtherance of business or commerce but performing statutory functions of public authority . Hence, it is not liable to pay service tax.

w.e.f. 01/06/2007, ‘renting of immovable property’ has been specially defined as ‘declared service’ under Section 65B(41) of Act, which reads as follows:-

“as allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, licensing or other similar arrangements in respect of immovable property”.

“Renting of immovable property ” means “ any service provided or agreed to be provided by renting of immovable property or any other service in relation to such renting”-Rule 2(1)(f) of the Service Tax Rules 1994.

It is important to note that the words **“for use or furtherance of business or commerce”** are not available in the present definition defined under the new scheme, and hence the

government offices have to pay the service tax on rent of the building which is used to perform their regulatory functions also.

The mega exemption Notification No. **25/2012-ST** dated 20-6-2012 provides for exemption to services provided to Government by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of – (a) civil structure or any other original works, (b) a historical monuments, (c) a structure meant predominantly for use as an educational, a clinical, or an art or cultural establishment,(d) canal, dam, or other irrigation works;(e) Pipeline, conduit or plant for water supply, water treatment or sewerage treatment or disposal and (f) a residential complex predominantly meant for self use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of Section 65B of the Act. The said exemption Notification does not specify that Renting of building to Government offices is exempted.

On perusal of the services specified in Section 66D i.e. Negative List it has been revealed that services renting of immovable property to government offices is not finding a place in the listed services.

Therefore, the Central Government and State governments along with the rent have to pay service tax to the owners.