

Service Tax on Rent: Sc Stays Dhc Interim Order

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The Supreme Court of India ("SC") has on January 10, 2011 stayed the operation of the interim order passed by the High Court of Delhi ("DHC") on May 18, 2010 in the matter of Home Solution Retail India Limited vs. Union of India & Others [WP (C) No. 3398 of 2010] till the next date of hearing of the matter before the SC on January 20, 2011.

By the interim order of May 18, 2010, the DHC had restrained the Service Tax Department from recovering service tax on commercial rentals. This stay/vacation of the interim order thus entitles the Service Tax Department to proceed to recover service tax from the assessee(s). The UOI preferred an SLP before the Supreme Court against the said interim order.

Meanwhile, the DHC has passed similar interim orders in various other writ petitions, designating Home Solutions as the lead matter in the bunch of similar petitions. Vacation of the interim order has therefore left all the other petitioners at crossroads. Since no party other than Home Solutions was impleaded in the SLP, the other petitioners before the DHC did not have an opportunity of being heard by the SC prior to vacation of the interim stay.

Arguably, the stay order of the SC would operate in the matter of Home Solutions alone, until the Government takes further steps to extend the vacation order to the other bunch matters as well. It will nevertheless be an uphill task for any petitioner to oppose vacation of the interim order, unless the SC restores the interim order of DHC in Home Solutions matter.

Earlier on December 14, 2010 upon suggestion of the counsels, the DHC had adjourned the bunch petitions to January 25, 2011 for further directions, with an understanding that the petitioners and the UOI would in the meantime appear and request the SC to expeditiously adjudicate the appeal against the earlier judgment of the DHC on the same levy, which is listed before the SC on January 24, 2011. One can expect a request from Home Solutions to the SC on January 20, 2011 to restore the stay, as well as to expeditiously adjudicate the appeal in accordance with the submissions made by the counsels before the DHC.

We would keep you updated of the relevant developments before the SC and the DHC.

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