

**To**

Date: 04.10.2011

...Name of the Tenant.....

...Address of the Tenant.....

.....

**Subject: Request for payment of Arrears of Service Tax [W.E.F. ....to.....] alongwith Outstanding Interest [W.E.F.....to....] consequent upon upholding of constitutional validity of Service Tax on “Renting of Immovable Property Services” by Hon’ble Delhi High Court on 23-09-2011**

Sir/Madam

### **1.0 Issue of Payment of arrears of Service Tax**

**1.1** Recently on 23-09-2011 Hon’ble High court of Delhi in the case of **M/s Home Solution Retail India Ltd. & Others vs. UOI and Ors-2011-TIOL\_610-HC-DEL-ST-LB** has upheld the constitutional validity of retrospective amendment by Finance Act, 2010 in definition of taxable service of ‘Renting of Immovable Property Services’. Before proceeding further, it will be worthwhile to add here that according to aforementioned retrospective amendment renting per se i.e. by itself has been made subject to service tax w.e.f. 01.06.2007. Relevant extract of the provisions of Section 65(105) (zzzz) of Finance Act, 1994 are given below 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** In the above-mentioned judgment of Delhi High Court it has, inter alia, been held that the provisions, namely, Section 65(105)(zzzz) & Section 66 of the Finance Act, 1994 and as amended by the Finance Act, 2010, are **intra vires the Constitution of India**. The challenge to the amendment giving it retrospective effect is unsustainable and, accordingly, the same stands repelled and the retrospective amendment is declared as

constitutionally valid. The following observations of the judgment [as given in **Paragraph No. 65**] are noteworthy:

**1.3** “Every building or premises cannot be utilized for commercial or business purposes. When a particular building or premises has the “effect potentiality” to be let out on rent for the said purpose, an element of service is involved in the immovable property and that tantamounts to value addition which would come within the component of service tax. To further clarify, an element of service arises because a person who intends to avail the property on rent wishes to use it for a specific purpose.”

**1.4** Likewise following observations of **Paragraph No. 69** are also worth highlighting:

“What is being taxed is an activity, and the activity denotes the letting or leasing with a purpose and the purpose is fundamentally for commercial or business purpose and its furtherance. The concept has to be read in conjunction....Once there is a value addition and the element of service is involved, in conceptual essentiality, service tax gets attracted and the impost gets out of the purview of Entry 49 of List II of the Seventh Schedule of the Constitution and falls under the residuary entry, that is, Entry 97 of List I.”

**1.5** It is also 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**. To substantiate foregoing view, case of **PEAREY LAL BHAWAN ASSOCIATION Vs M/s SATYA DEVELOPERS PVT LTD 2011-TIOL-114-HC-DEL-ST** is quoted wherein it has, inter alia, held as under:

*Service Tax - Renting of Immovable Property - Service recipient is required to pay the Service Tax to the service provider even if the contract did not specifically mention it; it is the service which is taxed, and the levy is an indirect one, which necessarily means that the user has to bear it.”*

**1.6** In order to further press upon the payment of service tax on your part, we would like to quote **Circular 4/2008 dated 28<sup>th</sup> April 2008** of Income Tax Department. In the aforementioned circular the Income Tax Department has impliedly 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 doesn’t partake the nature of income of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax”.*

**1.7 Thus, in view of above, you are requested to pay the service tax amounting to Rs..... in respect of the rent paid for the period from .....to.....**

**2.0 Issue of Payment of Interest of above arrears of Service Tax**

**2.1** According to opinion of our service tax consultants, liability for payment of interest arises w.e.f. 06-08-2010 in case service provider happens to be any person other than an individual or proprietary firm or partnership firm. On the other hand, in case of service provider being an individual or proprietary firm or partnership firm, liability for payment of interest arises w.e.f. 06-10-2010. **Since, we are Company/Partnership Firm or Sole Proprietorship Concern [strike out whichever is not applicable], you are liable to pay interest w.e.f. 06-08-2010 or 06-10-2010[strike out whichever is not applicable].**

**2.2 Rate of Interest**

The interest is to be paid at the following rates:

<b>Relevant Period</b>	<b>Kinds of Assesseees</b>	<b>Rate of Interest p.a.</b>
From 06-08-2010/06-10-2010 to 31-03-2011	All kinds of service tax assesseees	13%
From 01-4-2011 to date of actual deposit of Service Tax	Assesseees who fall within the purview of the term “Small Scale Sector”*.	15%
	All assesseees other than those who fall within the purview of the term “Small Scale Sector”*	18%

\* The aforementioned term “Small Scale Sector” means a service provider whose value of taxable services does not exceed Rs. 60 lakh during any of the years covered by the notice or during the last financial year.

**2.3 Thus, depending upon the case applicable to you, you are requested to make the payment of Outstanding Interest along with above-mentioned arrears of Service Tax.**

### **3.0 Issue of Depositing Penalty**

**3.1** In the opinion of our Service Tax Consultants, there is no need to make the payment of Penalty right now. Accordingly, we are not demanding any Penalty from you. However, it is pertinent to add here that if in future Service Tax Department demands any penalty on above-mentioned arrears of Service Tax, the same shall be duly recovered from you.

### **4.0 Enclosure of Detailed Computation Sheet**

In view of above, please find attached a detailed sheet exhibiting computation of arrears of Service Tax and Outstanding Interest.

Thanking You

**For .....**

**Proprietor/Partner/Director/Authorised Signatory**