



**DIRECTORATE GENERAL OF SERVICE TAX**

9<sup>TH</sup> FLOOR, PIRAMAL CHAMBERS, JIJIBHOY LANE, PAREL, LALBAUG, MUMBAI 400 012

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F. No. V/DGST/VII - RIP/146/2011-12 / 4894  
Mumbai, 26<sup>th</sup> September 2011

To,

The Chairman,  
Commercial Real Estate Committee, CREDAI,  
Maker Bhawan II, 4<sup>th</sup> Floor, 18,  
V. Thackersey Marg, New Marine Lines,

Churchgate, Mumbai - 400 020.

Dear Sir,

Sub.: Service Tax on renting of immovable property - reg.

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Please refer to your office letter dated 14<sup>th</sup> September, 2011 on above subject. As you are aware even though the incidence of Service tax may ultimately be borne by the Service recipients, as per Section 68 of the Finance Act, 1994, every person providing taxable service (Lessor in your case) to any person (Lessee) is required to pay service tax at the rate specified in section 66 ibid in such manner and within such period as may be prescribed. Hon'ble High Court, Karnataka in their judgement dated 14.03.2011 in the case of M/s. Devyani International Ltd. only reaffirmed the above position of law while dismissing the W.P. filed by petitioner tenant holding that they, not being service provider, have no locus standi to challenge the levy of Service Tax on renting.

2. You are also aware that several Hon'ble High Courts including the Division Bench of Hon'ble Delhi High Court have in their recent judgements upheld the constitutionality of levy of Service Tax on renting as well as retrospective amendments.

3. Thus, there being no doubts whatsoever either about the person who is liable to pay Service Tax or about the levy, this office is unable to agree with your suggestion regarding plea to be made by Department before the Hon'ble Courts.

4. Further you are aware that with the introduction of Point of Taxation Rules, 2011, service provider is required to discharge service tax liability at the earliest of the three situations envisaged therein. Thus the liability does not abate even if rent has not been received from tenants.

5. In view of the above, you may like to apprise your members of the recent legal developments and advise them to pay the service tax on time to avoid payment of interest or penalty in future.

6. This issues with the approval of Director General (Service Tax).

Yours faithfully,

(RAJU SARTHIVEL)  
JOINT DIRECTOR